REPORT

OF

THE GOVERNMENT OF BENGAL

ON

THE PROPOSED AMENDMENT OF THE LAW OF LANDLORD AND TENANT IN THAT PROVINCE

WITH

A REVISED BILL AND APPENDIXES.

VOLUME II

CONTAINING REPORTS AND MEMORIALS ON THE RENT COMMISSION'S DRAFT BILL, AND OTHER PAPERS.

Calcutta:

PRINTED AT THE BENGAL SECRETARIAT PRESS.

1881.

SCHEDULE I.

Reports and Memorials received on the Report and Draft Bill of the Rent Commission.

A.

Memorials, Reports, and Remarks by Associations, Landholders, Pleaders, and other non-officials.

1. Memorial by the Behar Landholders' Association, with notes on the proposed Rent Law.

2. Remarks by Baboo Lallchand Chowdhry and others, Zemindars of Chittagong, appended to letter No. 57, dated the 11th December 1880, from the Commissioner of Chittagong.

3. Letter from Baboo Kishorilall Sirkar, Pleader of the High Court, dated the 21st January 1881.

4. Note on the Report and Draft Bill of the Rent Commission, by Rajah Promothonath Roy of Dighaputtia.

5. Memorial by landholders of the district of Monghyr, dated the 25th December 1880.

6. Note on the Draft Rent Bill by Baboo Joykissen Mookerjea of Utterpara, dated the 4th October 1880 (appended to letter No. 1381, dated the 5th October 1880, from Collector of Hooghly).

7. Letter from Baboo Surjinarain Singh, Pleader, Bhagulpore, dated the 9th September 1880 (appended to letter No. 3570, dated the 27th November 1880, from Commissioner of Bhagulpore).

8. Memorial by the landholders of Backergunge (without date) received on the 1st February 1881.

9. Letter from the Secretary to the Behar Indigo Planters' Association, dated the 21st November 1880

10. Proposals for the amendment of Regulation VIII of 1819, by His Highness the Maharajah of Burdwan, dated the 9th May 1881.

11. Memorial by the landholders of Chittagong, dated the 20th November 1880.

12. Memorandum on the Bengal and Central Provinces Rent Bill, dated Lucknow, the 28th February 1881, by Luchmee Narain Pundit, Pleader of the High Court.

13. Memorandum on a Table of Rates, and the Procedure for Enhancement, by Baboo Joykissen Mookerjea (without date).

14. Petition from Hakimullah and others, Ryots of the Attia (Tangail) sub-division of district Mymensingh, in favour of the Rent Bill.

15. Petition from Khudiram Mundul and others, Ryots of district Nuddea, in favour of the Rent Bill, dated the 28th February 1881.

16. Note by the Eastern Bengal Landholders' Association on the Draft Rent Bill (received 9th March 1881).

B.

Reports by Judicial and Executive Officers of Government.

17. Report by the Commissioner of Bhagulpore (Mr. Barlow), dated the 27th November 1880.

18. Report by the Collector of Monghyr (Mr. D'Oyly), dated the 27th September 1880.

19. Report by the Collector of Purneah (Mr. Pratt), dated the 24th September 1880, with some additional notes by Mr. J. A. Hopkins.

20. Report by the Collector of Maldah (Mr. Porch), dated the 23rd September 1880.

21. Report by the Deputy Commissioner of the Sonthal Pergunnahs (Mr. Oldham), dated the 17th September 1880.

22. Report by the Collector of Bhagulpore (Mr. Newbery), dated the 10th September 1880.

23. Report by the Commissioner of Dacca (Mr. Pellew), dated the 27th December 1880, giving abstracts of the reports by the Collector of Dacca (Mr. Coxhead), the Collector of Furreedpore (Mr. Weekes), the Collector of Backergunge (Mr. Veasey), and the Collector of Mymensingh (Mr. Alexander).

24. Note by Baboo Parbutticburn Roy, Deputy Collector of Dearah Surveys (appended to the above).

25. Letter from the Officiating Commissioner of Burdwan, dated the 22nd December 1880, forwarding the remarks recorded on the Rent Bill by the Commissioner (Mr. Ravenshaw).

26. Report by the Collector of Beerbhoom (Mr. Wace), dated the 6th October 1880.

27. Ditto ditto of Burdwan (Mr. Stevens), dated the 5th October 1880.

28. Ditto ditto of Bankoora (Mr. Anderson), dated the 10th October 1880.

29. Ditto ditto of Midnapore (Mr. Price), dated the 30th October 1880.

Vide Enl. No 6. 30. Ditto ditto of Hooghly (Mr. Cornish), dated the 5th October 1880.

31. Report by the Commissioner of Orissa (Mr. Smith), dated the 28th December 1880.

32. Ditto ditto of Chota Nagpore (Mr. Hewitt), dated the 9th November 1880.

33. Report by the Commissioner of the Presidency Division (Mr. Monro), dated the 31st December 1880.

Vide Enl. No 7 34. Report by the Commissioner of Chittagong (Mr. Lowis), dated the 11th December 1880.

35. Ditto ditto of Rajshahye (Lord Ulick Browne), dated the 1st February 1881, with abstracts of the reports by the Collectors of Dinagepore (Mr. Glazier), Rungpore (Mr. Gun), Pubna (Mr. Posford), and Rajshahye (Mr. Samuells).

36. Letter from the Commissioner, Patna Division, dated the 10th March 1881, forwarding reports on the Rent Bill by the Collector of Patna (Mr. Metcalfe), the Collector of Gya (Mr. Kemble), the Collector of Shahabad (Mr. Nolan), the Collector of Mozufferpore (Mr. Worsley), the Collector of Durbhunga (Mr. Barrow), and the Collector of Sarun (Mr. MacDonnell).

37. Note by Mr. Edgar on some rent questions in Behar, dated the 18th January 1881.

38. Abstract of the reports on the Rent Bill by District Judges, Subordinate Judges, and Moonsifs, forwarded by the Registrar of the High Court.

39. Letter in continuation, dated the 3rd March 1881, forwarding a report by the District Judge of Cuttack (Mr. Cochran).

It is to be observed that several of the official reports embody the views of local committees, pleaders, landholders, and other non-officials consulted by the reporting officers.

Reg. No. 4679J.. 150—4-8-81.

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MEMORIAL

TO

HIS HONOR THE LIEUTENANT-GOVERNOR OF BENGAL

WITH

NOTES ON THE PROPOSED RENT LAW &c.

BY

THE BEHAR LANDHOLDERS' ASSOCIATION.

BANKIPORE.

PRINTED BY NARAIN CHANDRA CHAKRABARTI AT THE "BIHAR HERALD" PRESS

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TO

THE HONORABLE SIR ASHLEY EDEN K. C. S. I.
LIEUTENANT-GOVERNOR OF BENGAL.

The humble memorial of the
Behar Landholders' Association

MOST RESPECTFULLY SHEWETH,

That Your memorialists have read with the deepest concern, the Report of the Rent Commission, and the Draft Rent Bill, and beg to approach your Honor with the following memorial :—

2. The circumstances under which the Rent Commission in Calcutta was appointed, are thus set forth in the letter from the Government of Bengal to the Government of India published at pp. 227 and 228 Vol. II of the Report. "The Lieutenant-Governor, it will be remembered, in view of the loud and constant complaints put forward by the Zemindars as to the difficulty under the present law of collecting even undisputed rents, was anxious to provide them at an early date with a reasonably summary procedure to enable them to overcome the passive resistance of their Ryots, provided that the Ryots' tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process." The original scope of the legislation was thus very limited: Government was bound to redeem a pledge which it had given more than once to the Bengal Zemindars to simplify the procedure for the recovery of rent; and it was bound to see that the Ryots' right did not suffer unduly by such enactment. The policy apparently was to reconcile the Zemindars to the new responsibility cast upon them of collecting the Road and Public Works Cesses from the Ryots and of punctually meeting the Government demands on these accounts, by affording them increased facilities in the collection of their rents.

3. During the discussion which has been going on for the last few years on the subject, this policy has undergone some change. The policy which has dictated the Draft Rent Bill is thus set forth in the Remarks of Mr Mackenzie (Report Vol I p. 112.) "At present the Zemindars complain that they cannot enhance in spite of all the advantages given them by Act X which is the first law recognising definitely their rights to enhance with reference to the value of the produce. I would not myself remove any one of the practical difficulties now in their way unless they consent once for all

to recognise the Ryots' beneficial interest. If they want to see their own present position improved, they must, I submit, consent to all reasonable measures which will secure the general improvement of the country. I would take from them no income which they now enjoy, but I would not give them the ready means of making more, unless they are prepared to assist in recognising and restoring the rights of the cultivators." This is the policy of *Quid pro quo* distinct from the policy of conciliation adverted to above.

4. The changes proposed by the Draft Rent Bill are not, however, in consonance with either of these lines of policy. There is no summary law facilitating the collection of rent, and there is thus no fear of the rights of Ryots suffering unduly from such summary process; there are, as your memorialists show in their note annexed to their memorial, several radical changes in favor of the Ryots, trenching upon the vested rights of the zemindars, and no new rights, no new advantages are conceded to the zemindars as a compensation. In so far, therefore, as legislative interference has been deemed necessary to satisfy the requirements of the above lines of policy, it becomes absolutely unnecessary when the few Bengal zemindars, who were loud in their complaints as to the difficulties experienced under the present law of collecting and enhancing rents, now see that a remedy for the cause of their complaints is not possible even with the unsettlement of all the existing laws and the confiscation of half of their rights.

5. The Behar zemindars had not, however, made any such complaint and the above arguments for a change of law, trenching against their vested rights, cannot be urged against them. But your memorialists are aware that as regards Behar legislation is thought necessary because of the poor and depressed condition of its peasantry. The argument assumes that the condition of the Behar peasantry is poor and depressed, that this poor and depressed condition is owing to some defect of the land system as it prevails in Behar, and that owing to these defects, their condition is deteriorating from day to day. Your memorialists have taken the liberty of showing in their note how groundless these assumptions are.

6. The members of the Rent Commission in concluding their report, thus sum up the justification of their proposed measure :—

"1st. That the advantages offered by the Bill to the landholders are a full equivalent for any thing proposed to be given to the Ryots.

"2nd. That those who would think otherwise have to be reminded that in the opinion of *some* the ryots are entitled to demand more.

"3rd. That the power of the legislature to re-distribute property in land

at any time when such re-distribution is required in the interest of the entire community is undoubted.

"4th. That if such re-distribution has for its immediate result the impairment of existing rights, compensation is usually given by all civilized legislatures, but in the opinion of the Rent Commission nothing contained in the Draft Bill constitutes such a case.

"5th. That all its provisions fall well within the power reserved to the Government at the Permanent Settlement to make laws for the protection and welfare of dependent Talukdars and Ryots".

Your memorialists most respectfully beg to offer a few short remarks on each of these points :—

7. As for the advantages offered to the landlords being a full equivalent for those proposed to be given to the Ryots, your memorialists have simply to refer to the advantages of the respective sides under the Bill as summed up by the Commissioners themselves in the last paragraph of their Report, to show that while on the Ryots' side the rights are substantial and new, and so much subtracted from the sum of zemindary rights as guaranteed to the zemindars under the Permanent Settlement, the advantages offered to the zemindars are *nil*.

8. As to the second point, your memorialists most respectfully beg to submit that judges, who ought to be the guide in the interpretation of the laws, and rights of parties under them, have more than once emphatically declared that the Ryots were not only not entitled to ask for more, but that even the rights conferred on them by the Legislature by Act X of 1859, were an invasion on the rights of landholders. Sir Barnes Peacock suggested the repeal of Sec. 6 of Act X of 1859, conferring on the Ryots the right of occupancy on the ground "that it interferes with the just rights of the zemindars, at least in the permanently settled districts, by vesting rights of occupancy in the Ryots which had no previous existence." The present Chief Justice is quite as strong in his opinion on this point. He says "Now, however wise and politic this provision (Sec. 6 of Act X of 1859) might have been, it seems to me impossible to deny that it operated as an invasion of the landlords' rights as conferred upon them by the Permanent Settlement."

If the learned interpreters of the laws have thus declared the meaning of the law, your memorialists most respectfully submit that the opinion of *some*, who chance to think otherwise, being opposed to authoritative ruling, is not entitled to any very great weight.

9. How far the power of the legislature to re-distribute property extends, and under what circumstances of grave necessity in the interest of the entire

community, such power can be exercised, it is not for your memorialists to enquire, but to your memorialists to whom (as to all loyal subjects the honor of England is dear and who are unable to believe that the word of the British Government can be broken) the mere enunciation of such doctrine in connection with a case where the Government is solemnly pledged to keep intact the property for all time to come, appears fraught with incalculable mischief, and this the more so, as in the present instance, such an enunciation is quite out of place, for it is certain that the Local legislature for which the Draft Bill has been prepared, can never exercise such power of re-distribution, especially as no circumstance of grave necessity in the interests of community, under which alone, it is said, such power could be exercised has arisen in the present case.

10. The majority of the Commissioners while admitting that compensation is allowed by all civilised legislatures, when the re-distribution, has for its immediate result, the impairment of the existing rights, think that nothing contained in the Draft Bill, constitutes such a case. Your memorialists have simply to refer in reply to the special provisions for Behar, under one section of which rent payable in kind is not to exceed half the gross produce. Now as a matter of fact in many cases the Zeminders' proportion in Bhowli tenure is nine-sixteenths of the produce and the immediate result in these cases when the zemindary rental is Rs, 9,000 will be to reduce it to Rs 8,000. As your memorialists show in their note, the effect of most of the provisions is the immediate impairment of zemindary rights.

11. Do the provisions fall well within the power reserved to the Governor-General to make laws for the protection and welfare of dependent Talukdars and Ryots? Your memorialists most respectfully submit, not;—it could not have been ever contemplated that this reservation of power to enact laws for the Ryots' welfare, would carry with it the power to create new rights in their favor, without the consent of the Zemindars; for, if that was so, the Permanent Settlement would mean nothing. It is not alone by increasing the amount of fixed assessment that the Permanent Settlement is broken; but also by impairing in other ways, the existing rights of Zemindars, and as it was never intended at the date of the Permanent Settlement that the amount of Public Revenue should be ever enhanced, it was never contemplated at that date that Government should do any thing that would in any way deteriorate the value of Zemindars' property. Your memorialists imbued as they always have

been with a high regard for the honor, integrity and good faith of the British Government, can never believe that your Honor, whose administration has been always marked by these high principles of action will countenance a measure which will vitally affect the existing zemindary rights.

12. Your memorialists most respectfully beg to draw your Honor's attention to the Notes on the Rent Law, which they have drawn up and in which they have taken the liberty to criticise the Draft Rent Bill, section by section, as far as they have been able to do within the limited time allowed to them for the purpose. Your memorialists have serious grounds to apprehend that the provisions of the Bill will be injurious alike to the interests of the Zemindars and the present body of their tenantry; that as regards Behar it will seriously affect the interests of agriculture, and your memorialists pray that your Honor will be most graciously pleased not to allow the Draft Bill to be presented in Council, or if your Honor be pleased to deem it fit to be presented in Council, such modifications in its provisions be made as would trench least on the vested rights of parties.

And as in duty bound, your memorialists shall ever pray.

Bankipore,
Behar Landholders' Association
Office,
Dated, 1880.

Maheshwar Baksh Singh,
Maharajah of Doomraon.
Rajendra Kishore Singh,
Maharajah of Bettiah.
Lakshmishwar Singh,
Maharajah of Durbhangah.
} Presidents.

Kishen Pratap Sahi,
Maharajah of Hutwa.
Radha Prashad Singh,
Rajah of Doomraon.
Harendra Kishore Singh,
MaharajKumar of Bettiah.
Syed Lotfali Khan,
of Patna.
Syed Willayet Ali Khan, C. I. E.
of Patna.
} Vice-Presidents.

Syed Mohamed Shum Sul Hoda.
Hurbuns Sahai.
} Honorary Secretaries.

NOTE ON THE RENT LAW.

BY

The Committee of the Behar Landholders' Association.

NOTE ON THE DRAFT RENT BILL.

Part I *Chapter* I *Sections* 8, 9, & 11.

No good whatever is derived by the arbitrary rule laid down in Sec. 11. On the contrary, unless the Legislature were to declare sub-letting illegal, it will bring in sub-infeudation at present not much known under the Behar system. The Zemindars' profits will come to be divided among a number of middlemen; the only advantage (a very trifling one) gained by the actual cultivator being that if he is an occupancy ryot, under a tenure or under-tenure created by Sec. 11, the enhanced rent cannot exceed ¼th of the average annual value of the gross produce of the land for which the rent is payable, whereas in the case of his holding under an occupancy ryot, it can come up to *three-tenths*. (Sec. 23, clause *c*.)

The limits of enhancement of rent of tenures and under-tenures as laid down in Secs. 9, 10 and 12 will, in point of fact, render all enhancement practically valueless to the proprietors. To take a concrete example: A Zemindar lets out in a single demise 500 bigahs at 1 rupee per bigah for reclamation to a tenant, who becomes a tenure holder under Sec. 1, the tenure-holder lets out to two individuals in quantities of 250 bigahs to each by single demises; these are under-tenure holders of the 1st degree under (cl. *b*, Sec. 11) and the under-tenure holders of the 1st degree let out to other people at 125 bigahs to each. These are under-tenure holders of the 2nd degree. These let out to Ryots. After the actual cultivators have held for 12 years, an enhancement can be made only on grounds stated in Sec. 22. The enhanced rent cannot however be double of that previously paid. We will suppose the previous rate paid by ryots to have been 1 rupee 4 annas per bigah and the enhanced rate to be 2 rupees 4 annas. The enhanced rent collected by the under-tenure holders of the 2nd degree would be Rs. 1125. The fair and equitable rent to which under-tenure holders of the 1st degree would be entitled from the under-tenure holders of the 2nd degree will be three-fourths of Rs. 1125 or 844 allowing five per cent as charges for collection of rent and twenty per cent as profit to the under-tenure holders; the under-tenure holders of the 1st degree can have their rents enhanced fairly and equitably only to the amount of three-fourths of Rs. 844 or 633 allowing the same deduction in this case also. This will be the enhanced rent received by the tenure holder who in his turn can be equitably and fairly called on to pay only three-fourths of Rs. 633 or 475 to the proprietor.

The profit of Taluks under the Regulation was fixed at 10 per cent of the rents collected. (Vide Sec. 8 Reg. V of 1812.)

There does not appear to be any reason why tenure or under-tenure holders under Sec. 11 when they cultivate themselves should be entitled to any profit under Sec. 9 or 12. This is simply allowing them to retain a percentage of the average annual value of the gross produce—a percentage which the occupant ryots are not entitled to retain.

This is not the only advantage accorded to them over occupant and other ryots. As the Bill stands at present some of these advantages can be enumerated as follow:—

1st. There is no provision for ejectment of holders of land by a single demise of more than 100 bigahs. If the demise be not for a *term certain*, once installed they will continue to hold on for ever if they do not make default in the payment of rent.

2nd. In the case of these holders of more than one hundred bigahs, rents can only be enhanced under Sec. 9 and the limits fixed by that section and Sec. 12 whatever be the period of their holdings. They are not like 3 years' Ryots, or Ryots who hold for

less than 3 years, to pay whatever rent is demanded by the landlords. This will render their tenancy *permanent* even if it be intended to deny *this permanency* to holders of less than 12 years.

3rd. No restriction to the right of such holders to mortgage the lands. The tenures are also liable to sale for the satisfaction of decrees other than rent decrees.

4th. Illustration (*b*) of ground (1) of Sec. 22 shows that in cases of accretion occupant Ryots are to pay a fair rate for the lands accreted. It can be more than the rate of rent paid for the lands to which the excess lands are accretions; whereas under Sec. 8, the increase of rent, in the case of under-tenures is to bear to the rent previously paid the same proportion which the increase of area bears to the previous area of the tenure.

5th. There will be no restriction to the use of the lands demised to tenure-holders under Sec. 11 to any purpose whatever if there be no contract restricting its use. (Vide Sec. 77.)

Holders of more than one hundred bigahs are not ordinarily that class of helpless ryots for whose protection and welfare, the legislature intends legislating. To all reasonings they do not deserve that consideration which actual cultivators do require; and should not certainly be placed in a better position than they. As regards the transferability of these tenures and under-tenures the same objections apply as to the transferability of occupancy holdings. These will be considered under Sec. 20.

Section 10. The explanation attached to this section applies only to clause (*b*). From the non-application of the explanation to clause (*a*) it would appear that if to a tenure of 100 bigahs, 200 bigahs alluvial lands of the same quality are accreted the rent cannot be more than double the rent hitherto paid; or, in other words, 200 bigahs will come to be held at the rate payable for 100 bigahs; this is inconsistent with the rule of proportion laid down in Sec. 8, unless the two sections are intended to fix two different and distinct limits to the power of enhancement in such cases.

Chapters II, III, IV & V. The arrangement and some restrictive words, as also the note appended to Sec. 28 seem to indicate that these are distinct chapters, each fully describing the rights of a separate class of ryots. It does not seem to be the intention that all the rights of an inferior class shall attach to superior class. Chapters IV and V are distinctly restrictive to the classes whose rights they describe. There is of course no restrictive words to Chapter III; and it may be that the correct interpretation of the sense of the legislature may be that Chapters II and III are to be read together. A number of rights of Ryots described in Chapter II, that is the 1st class ryots who deserve more consideration than the rest are left to be defined to the chance of this interpretation. It is not perhaps intended that the rights of this class should be determined by custom alone, as it would be, if the statutory rights given to ryots described in Chapter III were not to apply to them.

The point should be made clear.

Chapter III *Section* 19. A ryot holds 50 bigahs in Bhowli tenure. He cannot cultivate the whole quantity every year, but allows 5 bigahs to remain fallow in each year; these 5 bigahs not being always the precise land. He can be said to pay rent by delivering a share of the produce only for the lands he actually cultivates in each year. Under the definition as it stands, he cannot have a right of occupancy in the land so held and cultivated by him; though he may hold and cultivate for more than 12 years

There is a tenure in Behar called Hastabood, under which money rent, the rate of which is determined previously, is paid for the lands actually brought under cultivation, whatever may be the quantity of land comprised in the Ryots' holding. It will be difficult to determine under the definition when rights of occupancy will accrue in such a case.

A Thicadar or an Ijaradar is not a tenure holder under Sec. 11 for he holds under a lease for a term of years at the expiry of which he is bound to vacate. It would seem from the provisions of cases under which a right of occupancy may be acquired under Explanation 3 of Sec. 19, that a right of occupancy cannot be acquired under a Thicadar or an Ijaradar. The provision does not at all seem just to Ryots.

A an Indigo planter holds 99 bigahs of Asamiwar lands under a terminable lease and is allowed to hold on for more than 12

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years after the expiry of the lease. It would seem under the provisions of case (7) of Sec.79 that his tenancy can be terminated by a notice to quit, if he has not acquired a right of occupancy. There is however no restriction in Sec. 19 to the acquisition of a right of occupancy by holding *for a term*, Asamiwar lands ; it would therefore appear that right of occupancy can be acquired in such cases unless it be said that Explanation 3 (clauses *a*, *b*, *c*) of Sec. 19 are exhaustive in their nature and Explanation 4 (clauses *a* to *h*) of the same section are not exhaustive.

From the absence in Section 11 of those explanations which are attached to Sec. 19, it seems that the right under that section may be acquired in the following cases:

(*a*.) By an Ijaradar, Thicadar or farmer of rents, in lands which is a portion of his Ijarah.

(*b*.) By a tenant, who, when he was first let into possession of land, by his landlord, contracted in writing with such landlord that a right under the section should not be acquired in such land. This also seems to follow from the wording of the section itself, which says that the demise shall be a tenure notwithstanding any contract to the contrary.

There does not appear to be any reason why the holders of more than 100 bigahs should be thus favored over the holders of one hundred bigahs and less, and private contracts thus over-ridden to give them a statutory right.

(*c*.) By a proprietor Mokarariдar or Istemrardar or other tenure or under-tenure holder who gives his lands in Ijara or Thica, and then by a single demise, comes to hold from the Thicadar more than one hundred bigahs of land.

(*d*.) Though as we have seen, a right of occupancy will not be acquirable by holding land under a Thicadar or Ijaradar, a right under Sec. 11 will be thus acquirable, for there is nothing which restricts the acquisition of the right in this case.

Section 20.

In the vast mass of literature on Rent Law, collected together by the labor of the members of the Rent Commission, we do not find a single sentence authorizing the transfer of mere occupancy rights. On the contrary the Rulings under Act X of 1859 and Act VIII of 1869 (B. C.) are against it and there is a significant passage in Harrington's Analysis quoted at page 408 of the Rent Report Vol. II. clearly showing that the Ryots had no such power of alienation even in good old days. The passage is to the following effect:—"On the whole, therefore, I do not think Ryots can claim any right of alienating the lands rented by them, by sale or other mode of transfer, nor any right of holding them at a fixed rent except in the particular instances of Khudkast Ryots, who from prescription have a privilege of keeping possession as long as they pay the rent stipulated for by them." (Extract from Harrington's Analysis p. p. 269, 281 & 301.)

From the above passage we find that the Ryots as a body, whether Khudkast or Pikast had not the right to alienate their holding by sale or other mode of transfer; that in the particular instance of Khudkast Ryots who from *prescription*, enjoyed certain rights, that right never extended beyond holding at Pergunah rates of rent and their not being liable to be disturbed in their holding so long as they continued to pay such rent. It is said that the landholder can care for nothing so long as he gets his rents; it does not matter from whom? The very argument which Lord Cornwallis used against arbitrary eviction of ryots when rent was ordinarily rack-rent, is now sought to be pressed in favor of purchasers of Ryots' rights under a condition of things when rents happen to be no longer rack-rents. The present learned Chief Justice, in his valuable minute on the proposed new Rent Law printed at p. 380 of the Rent Report Vol. III, thus disposes of this argument:—

"But assuming this to be the true view of the matter, what becomes of the justification for invading the landholder's rights, if the ryot is to be allowed, as soon as he has acquired his right of occupancy to get rid of it altogether? If the equity to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity if you allow the Ryot to transfer his interest?

"It seems to me that this view of the Zemindars' position is rather lost sight of in Mr. Field's note; and I think, moreover, that it is hardly fair to suggest that Zemindars ought not to object to the transferability of Ryots'

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tenures upon the ground that the measure would be merely unpleasant or injurious to themselves.

"It strikes me that this is just the ground upon which zemindars, or any other class of men, are perfectly justified in objecting to any public measure. And considering that in this instance the Legislature are dealing substantially with the two great branches of the agricultural interest—landlords on the one hand, and tenants on the other—the former have at least a right to insist that no measure ought to be passed which would be *unpleasant* or *injurious* to them, unless some solid advantage is to result from it to the general public."

It is positively injurious to the landlord, for, not to speak of the *unpleasantness* of having Ryots installed against their will, they become losers to the extent by which the Ryot gains; if instead of the Ryot's selling his right of occupancy to a stranger, a zemindar could give the right to the same party with the Ryot's consent the zemindar would obtain a share of the money value of such right; the consent of both, being necessary under the present law for a valid transfer.

Considering the question in a Ryot's point of view, the learned Chief Justice says "I should have thought that the most effectual way of protecting such people, and preventing them from wasting their substance, would be to secure them a permanent interest in their property, by prohibiting the alienation of it in any shape or way." (P. 382 Vol. II Rent Report.)

This is the very view of the case, which was taken by the Behar Landholders' Association in their Memorial submitted to His Honor, the Lieutenant-Governor last year. This memorial, as stating all their objections to the transferability of occupancy rights they annex as an appendix to the present note.

It is now generally admitted that the poverty-stricken condition of the Deccan Ryots for whose special relief, a law which trenched against the rights of a class and which ignored all private contract, was enacted only last year, was owing among other causes, to the transferable nature of their tenure. The following quotation is taken from a letter dated 29th February 1879 from the Secretary to the Government of India to the Secretary, Government of Bombay, circulated along with other papers for opinion on the Deccan Ryots' Relief Bill:

"(14) Satisfactory as this picture of progress is (and similar ones may be produced from all parts of India) there is undeniable evidence in the report before us that the very improvements introduced under our rules such as fixity of tenure and lowering of the assessments, have been the principal causes of the great destitution which the Commissioners found to exist.

"(15.) The saleable value of the land greatly increased the credit of the Ryot, and encouraged beyond measure the national habit of borrowing, which I have before observed on. High prices led to extended cultivation, to more expensive modes of living, to larger outlay on the great stimulant to Hindu expenditure—marriage ceremonies. Recourse to the money-lender became then more frequent than before, and the class of money-lenders competing for custom increased in undue proportions."

It is said that the Bengal Ryots are not to be judged by the standard of the Ryots of Deccan or other parts of India; but whatever point of difference there may be between the Ryots of Bengal proper and the Ryots elsewhere in India, and whatever advantage the former may have over the latter in their habit of prudence, the same can by no means, be safely asserted with respect to the Beharis. With them, with landlords and tenants alike, there is unfortunately no lack of the great stimulant to Hindu expenditure—marriage ceremonies.

Perhaps it will be said that as mortgages are forbidden, the Ryot cannot borrow on the credit of their lands; but if they cannot mortgage their lands, they can sell; and as will be shown in a subsequent part of this note, there are many ways under which the law restricting mortgages can be easily evaded.

If again Bengal Ryots are not to be judged by the standard of Ryots in other parts of India, they ought at least to be judged by the standard of those who are admittedly their betters. Not long ago, the following note by Mr. Hertslet, the Consul at Konigsberg on the practical working of the German land system went round the newspapers:—

"Landed estates, can be sold, parcelled out into the smallest free-holds, and disposed

of in any manner without any difficulty or expense beyond the contract stamp of 1 per cent. Renting of farms is almost unknown. Agriculturists buy the land, including barns and dwellings living and dead inventories at a price agreed on, pay usually a quarter or a third of the money down, and the rest is hypothecated on the estate, large or small : the hypothec banks generally advancing the money at 5 per cent, which cannot be demanded back, but may be gradually sunk or paid off by yearly instalments. But notwithstanding the facility of buying or selling landed property, the agriculturists are always complaining, and it is understood that at least two-thirds of them are in money difficulties, and public sales by the courts of law are of constant occurrence. The most of the nominal proprietors have not sufficient capital to work or cultivate property and most of them are in difficulties when the interest on the hypothecated debt is due. It is also remarkable that, with the exception of a very few estates which are entailed under the law of primogeniture by a small number of the higher nobility, hardly one estate has remained in the same hands or family for fifty consecutive years, and it appears to be hard on a proprietor to sink such capital in landed property, which must in most cases be sold at his death."

Even Mr. Mill, who saw nothing but good, in the system of peasant proprietorships, says, "undue sub-division, and excessive smallness of holdings, are undoubtedly a prevalent evil in parts of Germany and Flanders." (Mill's Political Economy Vol. I. p 366.)

But however good, the peasant proprietorships may be in countries where they are so to say, indigenous to the soil, where the habit of the people favors such a system of land tenures, and where as in Norway, Belgium, France, there are existing checks to an overgrowth of population imposed either by law or the salutary customs of the people, it does not follow that we could secure an equal amount of good by transplanting the same land system in Bengal and Behar where over-population, sub-letting and subdividing are the prominent features in the economic condition of the peasantry. * Add to this, the chronic indebtedness of our people, and the danger of the measure becomes at once manifest. While there is to be sub-division in one hand, there is every possibility of accumulation of these small holdings in the hand of capitalist Mahajuns on the other—and side by side, with the present race of Zemindars as annuitants on their own land, there will spring up landed proprietorships of another kind with Mahajuns as owners: thus the only good we derive from the measure, is to sweep away the present race of our peasants.

It is noteworthy, how when the land question has been a burning one for centuries in Ireland, the introduction of the system of peasant proprietorships of Belgium and France into Ireland has not been advocated by those who are best able to pass an opinion on the subject. With reference to this subject Emile De Laveleye says:—

"In Flanders you do not find the land subdivided in the way it is in Ireland, according to Lord Dufferin, who has shown the evils of the kind of sub-division practised there; from his description it appears that in Ireland at the death of any holder, and often even during his lifetime, the children

* In the 24 pergunahs which are now comprised in the District of Gya the total number of estates in 1789, was 744 and the number of proprietors 1160; in 1871, the number of estates was 4411; and the number of registered proprietors 20453. In eighty years, therefore, each estate has on an average been split up into 6; and where there was formerly one proprietor, there are now eighteen. (Statistical Reporter Vol XII p 126). In 1790, there were 1232 separate estates on the Rent-roll of the Patna district, as then constituted, held by 1280 registered proprietors. Including a net total of 777 new estates obtained by transfer from the Gya district, the number of estates on the Rent-roll of the district amounted in 1870-71 to 6075. The number of registered proprietors had increased to 37,500. Allowing for the increase in the size of the District by the addition of the Behar sub-division, the number of estates under the Patna Collectorate had quadrupled since the original assessment in 1790; and where there was formerly one proprietor, there are now probably twenty. (Statistical Reporter Vol XI. p. 187.) In the district of Tirhut, the figures are more marked. In 1790, there were 1,321 estates held by 1939 registered proprietors. In 1871, the number of estates was 11,500 and the number of registered proprietors 73,416. (Statistical Reporter Vol. XIII p 168.) So long ago as 1789, Mr. Shore remarked on the insignificant size of the Behar estates and the poverty of their owners. If sub-division has gone on thus rapidly with estates, it is hard to expect a different state of things in case of transferable occupancy holdings.

divide the lands among themselves, each of them building a cottage on it; or, if the tenant has no children, he sub-lets his land to several small farmers, and allows them to settle on it, notwithstanding the stipulations of the lease. Such breaking up of the land must lead to the most wretched farming, and to pauperism on the part of the tenants. As long as the Irish farmer has no better understanding than that of his own interest and of the requirements of a sound economical system, no agricultural policy, neither fixity of tenure nor even ownership in fee-simple could improve his condition. Although the population of Flanders is twice as dense as that of Ireland, a Flemish peasant would never think of dividing the farm he cultivates among his children; and the idea of allowing a stranger to settle and build a house on it, and farm a portion of it, would appear altogether monstrous to him. On the contrary, he will submit to extraordinary sacrifices to give his farm the size and typical shape it should have.

"How is it that the Fleming and the Irishman hold such different points of view? I think it is partly due to the difference of race, and partly to circumstances. The Celt, being more sociable, thinks most of the requirements of the members of his family, whilst the Teuton thinks more of the requirements of the soil and of good cultivation. .....But supposing the Irishman to become the absolute owner of his farm, would he learn and comply with the requirements of the land? A Flemish farmer's son always wants to have a good farm of his own; he would not put up with a hovel improvised on a potato field. Could the Irishman but be brought to practise agriculture as an art, and not as a mere means of bringing a subsistence from the soil, he would soon abandon the miserable system of sub-division which he has adhered to so long. But how is this state for agriculture as an art to be imparted to him? To extinguish the influence of instincts or tendencies, whether inherent in the race or the historical product of centuries, would it suffice to introduce an agrarian constitution in Ireland similar to that of Flanders, or, better still, Switzerland? These are questions which I confess myself not in a position to answer; but they are questions which those who have the Irish land question to solve ought to face, when considering the land system of Flanders." (Cobden Club Essays.)

It is significant to observe that in enacting for the N. W. Provinces in 1873, the Supreme Council, did not think it expedient to give a statutory right of transfer to 'right of occupancy'—the mere creation of Act X of 1859, in Bengal as well as in the North-West.

Section 9 of Act XVIII of 1873 (the North-Western Provinces Rent Act) runs as follows :—

"The rights of tenants at fixed rates shall be heritable and transferable.

"No other right of occupancy shall be transferable by grant, will or otherwise, except as between persons who have become by inheritance co-sharers in such right.

"When any person entitled to such last mentioned right dies, the right shall devolve as if it were land, provided that no collateral relative of the deceased who did not then share in the cultivation of his holding shall be entitled to inherit under this section."

The tenants at fixed rates are thus defined in Section 5 :—

"All tenants in districts or portions of districts permanently settled, who hold lands at fixed rates of rent which have not been changed since the Permanent Settlements, shall have a right of occupancy at those rates, and shall be called 'tenants at fixed rates'."

Thus occupancy right is not only not transferable; but not even heritable under the law as it prevails in the North-Western Provinces.

Is there any reason why incidents which are denied to occupancy holdings in the North-Western Provinces, either from a regard to expedieney or from a regard to the existing rights in that province, shall be attached to occupancy rights in Bengal and Behar. If the Ryots of the lower Provinces are not to be judged by the standard of the Ryots of the North-Western Provinces, it should also be borne in mind that the Ryots of Behar are not to be judged by the standard of the Ryots of the lower Bengal; and that there would be fewer chances of mistakes if they were to be judged by the standard of the Ryots of the North-West.

As regards Behar, the majority of the members of the Behar Rent Commission who in one respect at least had the advantage

over the members of the Rent Commission sitting in Calcutta, that they knew the people of this province better, were of opinion that it is not desirable to alter the existing law on the subject. On a further reference to the members by the President after the sitting of the Commission was over, it appears that only 4 out of 15 members, being perhaps the original minority were for unrestricted transfer. It is noteworthy to remark that two of these members are Indigo planters themselves, or persons interested in Indigo planting; the other two, Messrs Worsley and Finnucane would not allow sub-letting if transferability of occupancy rights were to be recognized by law. Two other members would only allow transfer to *bonafide* cultivators; the other members, being the majority remained opposed to such transferability.

If then transferability of occupancy rights be recognized by law, let the legislation be at least experimental. Let it prevail as an experimental measure in *Government Khas Mehals* and let power be given to the Lieutenant-Governor to extend it to other parts of the country if the experiment proves a success. The Committee of the Behar Landholders' Association would also suggest, that in the interest both of the landlords and existing Ryots, the new statutory right be so fenced in with restrictions that it may not prove very injurious to either.

With respect to the proposal for transferability of occupancy rights Sir Steuart Bayley, in a note on the proposed Rent Law for Behar says: "25. I would also adopt Mr. Worsley's subsidiary proposals, making occupancy rights transferable by sale so long as there is no outstanding decree for rent; and I would make them resumable by the zemindar as *forfeit* when rent is not paid within 15 days of a decree. Of course these suggestions, will, as pointed out, increase litigation, but I am firmly convinced that the more the question of the existence of occupancy rights is forced into Court, the more will the enjoyment of them be secured to the cultivator." Sir Steuart Bayley, though persuaded to believe that the measure will lead to litigation, concurred in the proposal of a restricted kind of transfer, on no better ground than that the question being forced into Court, would make the enjoyment of the right of occupancy secure to the cultivator. He would not take away the landlords' right of re-entry for nonpayment of rent decreed; nor allow occupancy rights to be sold so long as there would be an outstanding decree for rent.

The Committee of the Behar Landholders' Association beg to make the following humble suggestions:

That the landlords' right of re-entry be left intact, and option be allowed to them either to exercise the right of re-entry, or to bring to sale the occupancy rights of their tenants with the proviso that if once they choose to put to sale such rights, the transferee's right of subsequent transfer be unrestricted. They would also suggest that such rights be not made saleable in execution of any other decree than a rent decree due to the *entire* estate; and that *bonafide* transfer by Ryots be restricted to Ryots of the same estate, giving the landlord the option of purchase at the highest price offered. These limitations also trench on the vested rights of zemindars, and they are suggested simply because sales under such restrictions obviate many of the objectionable features in the provisions as now proposed. As the provisions in the draft Bill stand at present, the statutory right of occupancy, stands on a better footing than Putney Taluks.

Section 20 (*d*)

This provision, it is to be feared, [illegible] be easily evaded, by t[illegible]ry processes which gave rise to *Baibilwafa* Mortgages, or by the Ryot's letting out his land to his Mahajun from whom he borrows money (say 100 rupees) for a rent of Rs. 45 and then taking back a lease on a higher Jumma say 75 rupees for 6 years. At the end of 6 years, the Mahajun gets Rs. 210 for 100 rupees lent; and if such lettings and re-lettings be not made absolutely illegal, the Mahajun's lien over the property in the shape of a rental will be enforceable by suits in the courts.

Section 20 (*e*.)

A, a ryot stipulates in writing that he shall not convert his agricultural holding, into a garden by planting fruit trees and that he shall be liable to ejectment if he do so. He acts contrary to the stipulation and the landlord obtains a decree for ejectment. He shall nevertheless be entitled to receive compensation for the fruit trees under Sec. 29; or in other words, the

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Ryot will be entitled to receive compensation for 'improvements' being the very breach which forms the ground of his ouster. If in a case of this kind, the Ryot makes 'improvements' after the breach of the stipulation, is he to be entitled to compensation for such improvements? And if he is, will he not try to resist ejectment by a spasmodic effort at improvements, so as to be able to make the longest bill for such compensation.

Section 21.

Compare this with Sec. 83. It will be found that Ryots holding even for less than 3 years (*i. e.*) tenants-at-will at Bhowli tenure in Behar will be in a better position than the corresponding class, in Bengal proper holding in *Bhagjote*, and even than the occupancy holders at such tenure in Bengal, for whether the Ryots in Behar receive any assistance from the landlord or not in producing the crop, the landlord's proportion of the produce will be never more than half. (Vide Sec. 83. Behar special provisions.)

Section 22. *ground* (1) *Illustrations.*

Now as the Ryots are divided into so many classes, the word *same class of Ryots* ought to mean one of the classes in which the Ryots are classified under the Act. The illustrations however show that very nice shades of distinction are to be drawn and attended to and the interpretation of the words 'same class of Ryots' is to be left entirely to the courts in each particular case. This rendering the ground uncertain, and proofs difficult, will practically make enhancement impossible under this head.

Sections 23, (*a, b, c.*)

On the subject of the enhancement of rent the Commissioners remark: (Page 24 Vol I. Report.)

"Whether then the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same, namely, that the ruling power ought to determine the rents payable in these provinces by the Ryots to the Zemindars. In this view the appropriate theory of rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by, the profits to capital; but that it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the Zemindars, or those to whom the Zemindars have transferred their rights. If it be asked on what principle Government should determine this proportion,—what share shall be considered fair and equitable,—one answer is,—such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land." Under this theory of rent the Commissioners have imposed on the Zemindars' demand of rent, limitations which involve a redistribution of the property in the soil, and a confiscation of a portion of the Zemindars' existing rights. That the ruling power, has under certain exceptional circumstances of grave necessity, the right of making such a redistribution, no one can deny; but the question is whether such grave necessity exists in the present case; and whether such a power, should be formulated in a convenient theory of rent. The immediate result of the various limitations imposed upon the landlords' right of demand of rent, is the impairment of a number of their existing rights. As regards Ryots with rights of occupancy the matter of enhancement of rent under grounds 3 and 4 has years ago been settled in a certain way which is now accepted as law both by landlords and tenants. As will be seen from the concrete examples noted below the effect of the limitations imposed, is to control the rule of proportion in cases where the rate of rent determined according to this rule is favourable to the landlords, and how can it be denied that in so far it is a clear case of confiscation of existing rights.

A, a ryot pays 4 rupees as rent per bigah producing 12 maunds of crops valued at 12 rupees. The price rises, and this value becomes 16 rupees. The rent enhanced can be Rs. 8 under the first part of clause (*a*) Sec. 23; it can be enhanced up to Rs. 6 under part second of the same section. It cannot be more than 8 rupees under clause (*b*) first

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part and cannot be more than 5½ under clause (*b*) second part. It cannot be more than Rs. 4 under clause (*c*); or, in other words, no enhancement being possible, the landlord's right, as it exists at present, suffers to the extent of 1 rupee 5 annas, that is, by an amount which is fully equal to a third of his existing rent.

A, a Ryot pays 2 rupees 8 annas per bigah which produces 5 maunds valued at 5 rupees. The landlord expends money on earth-works (*gilandazi*) and the produce is increased to 10 maunds valued at 10 rupees. Under clause (*a*) the rent ought to be 2½+5=7½ Rs. Under clause (*b*) first part it cannot be more than 5 rupees; under clause (*b*) second part it cannot be more than Rs. 5. Under clause (*c*) it cannot be more than 2 rupees 8 annas. In this case, the landlord's existing right suffers to the extent of 2 Rs. 8 ans. or by an amount which is equal to the present rent.

A, a Ryot pays 2 rupees per bigah of land which produces 7½ maunds valued at 15 rupees. The price rises to rupees 18. The zemindar is entitled to 3½ Rs. under clause (*a*); under clause (*b*) first part it cannot be more than 4 Rs.; under clause (*b*) second part it cannot be more than 2 Rs. 6 ans; under clause (*c*) it cannot be more than 4 Rs. 8 ans. Here a nominal enhancement is possible. The twenty-five per cent limit under clause (*c*) which we have seen, destroyed the chance of enhancement in the two previous examples, is in the last case controlled by the rule of proportion and double limit. So one limitation or other will come in to control the *rule of proportion* when it leaves room for enhancement.

The effect of these limitations, is thus described by one of the dissentient members of the Rent Commission: "Following up the hypothesis which I have combated above, the Commission has suggested a provision to the effect that the enhanced rent of an occupancy ryot should not be more than one-fourth of the average annual value of the gross produce of the land. This dogmatic limitation of the zemindar's share of the produce is not only contradicted by the glaring fact that both in Bengal and Behar when rent is payable in kind, the zemindar's share of the produce is rarely less than 50 per cent, but it is also indefensible on the grounds of justice and even of expediency. In those tracts of the country where rent is at present considerably more than 25 per cent of the value of the produce this rule will stop enhancement of rent altogether. The argument that the landlords in those places already enjoy more profits than what they are fairly entitled to is at best specious. The profits of landlords are not necessarily large in districts in which the ratio of rent to produce is high, nor are they necessarily small where the ratio is low. It appears from the valuations of estates as determined by road-cess papers, that in Beerbhoom and Hooghly, where the ratio of rent to produce is considerably more than one-fourth, the revenue is more than 45 per cent of the valuation, while in Dacca and Chittagong, where the ratio of rent to produce is less than one-sixteenth, the revenue is less than 25 per cent of the valuation of estates. The result of the operation of the proposed rule will be that in some cases, as I have already said, it will stop enhancement altogether; in others it will raise the rent in various proportions; in others again it will lead to a decenial doubling of the rents, and in all it will disturb the relative profits which the landlord and the ryot have been hitherto deriving from the land."

Section 25 (1.)

A, a Ryot was let into possession of a holding in 1870 under a written lease, which describes the holding as comprising 37 bigahs of land and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880, the land within these boundaries is measured and found to be 34 bigahs This is the converse of illustration (*d*) of ground (2) section 22, and it is hard to understand why the converse case disentitling the Ryot to seek for abatement of rent, should not hold good in such a case.

Chapter IV.

The rights intended to be conferred on Ryots holding for 3 years and less than 12 years are new and are clear infringement of the Zemindary rights. Babu Mohiny Mohun Rai one of the native members of the Commission remarks: "Chapter IV. Sections 26 to 31.—Investing 3 years' Ryots with occupancy rights in a modified form. This is a flagrant change and requires no comment." The law at present is settled and clear that Ryots

not having rights of occupancy are to pay the rents demanded by their landlords or they are to quit the land. The rate of rent however is not settled by the caprice of the landlord, but by the rule of supply and demand, which regulates all contract rates. At least this has been the law for the last twenty years or more. Some members of the Rent Commission were of opinion that under the customs of the country a resident ryot once let into possession of Assamiwar lands, was entitled to retain possession of the said lands so long as he continued to pay rent for the same; that the enactment of Act X of 1859, did not and could not destroy this custom, and that according to this custom, there should be an absolute interdiction to the landlord's right of re-entry in any case. The members who held this view would absolutely cut the period of occupancy right from 12 to 3 years, and the proposals under Chapter IV are said to be the result of a compromise between extreme views on the subject. It is hard to understand what a compromise means in the present case. If under custom, Ryots had certain rights attached to them and these vague and uncertain rights had not been defined very favorably to the Ryots' claim in 1859 as some suppose, why go to define this custom by the fast rule of 3 years' occupation, and add to such custom in the bargain. Section 4 of the Bill saves all such customs and the Courts may well be left to take cognizance of such customary rights where they may be proved to exist. Why convert a customary right not known to have existed in all parts of the country, and which ceased to exist in others by lapse of time, into a statutory right for all Ryots? The Ryots of these days are not necessarily the descendants of Ryots who held land at the date of the Permanent Settlement. If they are they will be sufficiently protected in their rights by the provisions of Chapters II and III. That such a custom ever existed in Bengal or Behar, demands the clearest proof. On these points, the opinion of judges is of great weight and the present learned Chief Justice in his minute says: "By the Permanent Settlement zemindars were (subject to certain restrictions which are immaterial to our present purpose) left free by the Legislature to let their unoccupied land to Ryots upon whatever terms they thought proper. They had almost as much freedom in that respect as landlords have in England. The terms upon which they let the land were a matter of contract; and the principle of demand and supply (whether of Ryots or land) usually regulated these terms.

"Mr. Field expresses some doubt whether a Khudkast Ryot, as long as he paid his rent, could be turned out of his holding by his landlord. But however this may be it is certain that before the passing of the Rent law in 1859, a landlord could, and did almost at pleasure, rid himself of objectionable tenants.

"To obviate this apparent injustice, Act X of 1859 protected a Ryot, from eviction after twelve years of occupancy.

"New however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landlord's rights as conferred upon him by the Permanent Settlement; and the only equitable ground upon which such an invasion could be justified would seem to be this, that if a Ryot had approved himself as a good tenant by cultivating his land and paying his rent satisfactorily for so long a period as twelve years, it was only fair to him, and no real injustice to the landlord, to continue him in his occupation, and prevent his being ejected without some sufficient reason."

That the provision of Sec 6 of Act X of 1859, was a clear invasion of landlords' right is also to be seen from the minute of Sir Barnes Peacock dated 31st March 1864 wherein he says: "It appears to me that section 6 is objectionable and ought to be repealed, first because it interferes with the just rights of zemindars, at least in the permanently settled districts, by vesting rights of occupancy in Ryots, which had no previous existence."

This is the view which two learned judges have held with respect to the Ryots' rights and the provision in Act X of 1859 regarding right of occupancy. If they thought a provision under which the Ryots' right to hold would come to be recognized after a continuous occupation of 12 years to be a direct invasion of the permanent rights, by how much more would they not take this new provision of 3 years' occupancy to be a flagrant breach of the same.

That it was the object of the framers of

Act X to confer a special and defined right on Khudkast Ryots whose rights were previously undefined and who were liable to arbitrary eviction, also appears from the minute of Sir Frederick James Halliday, dated 27th November 1858 wherein he says: "Perhaps the opportunity should be taken to define what has always needed definition viz, the term 'Khudkast and Kademi Ryots'. Mr. Sconce. Judge of the Sudder Court has suggested that instead of the terms used in section 3 and 4 of the Bill, there should be substituted the words, 'ryots having a prescriptive right of occupancy' and he would fix twelve years as the term of uninterrupted occupancy, after which a ryot should come under the description he proposes. To this I would assent, believing that in doing so we shall be discharging a heavy obligation towards the Ryots long unfulfilled by our legislation. I would also use means to show that this was the definition of a 'Khudkast or Kademi Ryot' elsewhere alluded to in our Code." To use the words of Sir Frederick Halliday, *a heavy obligation to the Ryots, long unfulfilled by the Legislation*, was thus discharged by the enactment of Act X of 1859. The undefined rights of Khudkast and Kademi Ryots were ascertained and defined, and doubtless Act X of 1859, altered the law, as it then existed, to the great advantage of the Ryots. It is now proposed to cut the landlord's right of eviction from 12 to 3 years. The effect of this is that if the Ryot holds for 3 years, he will hold on for ever, for the Ryot in such a case can easily meet the landlord's demand of increased rent by claim for compensation for disturbance, and compensation for improvements true or false. In this respect his position will be sometimes better than that of an occupancy Ryot. If the landlord seeks to evict him on other grounds he will be equally met by a demand for compensation for improvements. Suppose there be a condition in the lease that the Ryot will be liable to eviction for altering the condition of the land, though there will be a decree in landlord's favor for eviction of the Ryot, for the breach of such condition, the decree nevertheless will be contingent on the landlord's payment to the Ryot of compensation for alterations made; or, in other words, the Ryot will be entitled to compensation for the very breach which will form the ground of his ouster.

Again, as has been pointed out by the dissentient member of the Rent Committee, Babu Peary Mohun Banerjea, rights of occupancy may not, even if it be declared saleable, find a ready purchaser, or the price fetched in the market by the sale of such rights, may not, for years to come, be more than one or two years' purchase, but the amount of compensation, will in most cases, be much more; and thus by a strange inconsistency in the law, a three years' holding, as between the landlord and tenant, will be more valuable than the 12 years' right of occupancy. As regards the claim for abatement of rent, the status of a three years' Ryot will come to be assimilated to the position of an occupancy holder. There may be hundreds of ways for improving the condition of the Ryots; but to make the landlords jealous of the rights of Ryots, is not the best way to improve it.

Section 26. From the definition of the word 'Ryot' it is clear, that sections 16, 20 and 32 are subject to the provisions of section 11. Yet from the absence of the qualifying words "subject to the provisions of section 11" as used in section 19, from these sections it would seem that this is not so.

An Indigo planter holds a lease of Asamiwar lands for 5 years, with or without an express stipulation to relinquish at the end of the term; at the end of 3 years, he acquires a right to hold under this section and he cannot be evicted on the expiry of the term for his tenancy cannot be determined under Sec. 79.

Nor does the tenant's retaining the land at the end of the term, when there is an express stipulation to quit, come under clause (*b*) which provides for eviction as a penalty for the breach of a condition of the lease.

As the right under Sec. 26 is strictly personal and not heritable, there ought to be provision for the determination of such tenancy on the death of the tenant.

It would appear, from the omission of the Explanation (1) as given under section 19, that the holding of the father is not the holding of the son under this section. If this is so, it should be declared to be so; for in that case, no Ryot would think it worth his while to invest money in 'improvements' which he would know, might

lapse to the landlord, in case of his dying before the acquisition of a right of occupancy under Sec. 19.

Section 26. What is the necessity for stating the *grounds* for an increased demand. The law does not provide for a suit for testing the sufficiency or otherwise of the grounds. The Ryot's course is either to consent to hold on the increased rent or to relinquish; and the landlord must pay compensation for disturbance and compensation for 'improvements' in case of the Ryot's electing to relinquish, whether the grounds stated by him be sufficient or insufficient; and how can a three years' Ryot sue for the determination of the amount of annual rent payable for such land under Sec. 151 when this is the case?

Will not a three years' right of occupation be acquirable under conditions as given in Explanation 3 of Sec. 19 and not acquirable under conditions as given in Explanation 4 of the said section or is the 3 years' right acquirable irrespective of these conditions? In the latter case, it would follow that a 3 years' right would be acquirable (1) by a tenant, who, when he was first let into possession of land by his landlord, contracted in writing with such landlord, that a right under this section should not be acquired in such land.

(2.) By a proprietor, Mokararidar, Istemrardar, Thikadar, or Ijaradar in a portion of land in which he has a proprietory, Mokarari, or Thikadari interest as against co-sharers, auction purchasers, or proprietors on the expiry of the term of the Ijara or Thika.

Section 26. If a tenant is let into possession of more than 100 bigahs, without the specification of a term, how can he be ejected by the landlord, so long as he continues to pay rent? See also section 79 of the Bill.

Section 27. (*b*) Would it not be absurd that even when the Zemindar limits his claim for enhancement on grounds on which he could enhance the rent of an occupancy Ryot, it would still be in the option of the 3 years' Ryot to relinquish his lands and to obtain disturbance compensation and compensation for 'improvements'?

Section 29, not being exhaustive leaves to the option of every Munsiff to say what is 'improvement' in each individual case. The determination of what is 'improvement' in each individual case and the amount of compensation to be awarded will lead to bitter and harassing litigation; and if anything, Amladom has more to answer for the ills of Behar, than the defects of its land system if there are such.

Section 31. Who is to decide as to the reasonableness of the Ryots' demand for abatement? At times it may be advantageous for Ryots to relinquish by seeking abatement. A Ryot pays a Jumma of 200 rupees per annum for 50 bigahs in 25 of which he plants trees; when the trees are fully grown it may be profitable for him to raise a capital by selling them in a lot; and the most advantageous way to do it, will be to seek for abatement to the extent of say 150 rupees and in case of the landlord's refusal, to relinquish and receive compensation for the trees and 150 rupees in the bargain. Section 153 is entirely one-sided. The landlord, can only show under that section by way of answer to the Ryot's claim for abatement that such claim is improper; but it does not provide for a suit by the landlord to determine the unreasonableness of such ground.

When the Ryot can sue for the abatement of rent and can ask for compensation for improvement, should not the contrary hold good as against them. There may be cases where a Bhowli Ryot allows his lands to lie fallow; there may be cases where a Ryot turns a portion into a Jungle, or deteriorates its value by digging pits &c. What is the landlord's remedy in these cases? The Behar Rent Commission recommended compensation in the case noted above regarding Bhowli; but though cases of this kind are very common in Behar we find that their recommendation in this behalf has been over-ruled.

Section 35. (1) Why are the grounds for the landlord's demand of higher rent to be stated when the Ryot is not entitled to question the unreasonableness or otherwise of such grounds?

Section 35. (2) This limit will injuriously affect Dearah settlements. A, a ryot holds 50 bigahs of sandy Dearah lands at a nominal rent say 4 ans. per bigah. The next year the land is covered with alluvial soil, and the rent that can be reasonably demanded

is 1 rupee per bigah; but under this rule it cannot be more than 8 ans. per bigah.

This limit of increase to double the former rent does not however apply to 3 years' Ryots; so that after 3 years, the increase demanded can be more than double; only in that case the Ryots will be entitled to relinquish and ask for compensation for disturbance. There does not appear to be much reason why the limit should exist in cases of tenants-at-will, when it would not exist in case of the 3 years' holders.

Chapter VI. In Behar agricultural villages the home-stead lands are the raised lands of a village usually known as *Dih* lands which form but a small portion of the same. In this *Dih*, there may be a few bigahs of *Bhadoi* lands, but the whole extent including the habitable portion never exceeds 5 or 6 bigahs. The habitable portion consists of the houses of the cultivating Ryots and the houses of one or two artizans or shop-keepers. The cultivating Ryots pay no rent for their home-stead lands. Their houses in many cases are the property of the landlords, by whom they have been built, though they are repaired at the Ryots' expense and labor during the period of their occupation. The non-agriculturists pay a little ground-rent called *Mataharfa* oftentimes in kind, either by delivering a little quantity of the goods they sell, or performing some services for the landlord or his Amlahs. Thus the Teli pays a little but fixed quantity of oil as his *Mataharfa*, the Milkman, a little quantity of *Ghi* and *Dahi* and a fixed number of cow-dung cakes here used as fuel. Neither the agriculturists who pay no ground-rent nor the non-agriculturists, who pay only a nominal rent are ejected out of their home-steads which they occupy from generation to generation. The rest of the lands of a village are *Bahursi* usually low lands surrounding the habitable portion, which can never be converted into home-stead lands but at considerable expense.

Sometimes, but not very often, in larger villages called *kasbas*, agriculturists and non-agriculturists build substantial houses. In these *kasbas*, home-stead lands are in some demand, and fetch rent; but in all these cases lands are acquired under contract; and the men find no difficulty whatever in procuring sites for building houses with whatever title they may like to obtain in these lands. The provision of this chapter, will, it is to be feared, affect the prevailing customs on the one hand, and the freedom of contract on the other.

Section 36 runs thus: "When land used or let to be used for agriculture &c, is held by any *such Ryot as is mentioned in Sec.* 16 *or in Sec.* 26, such Ryot shall not without the permission of the landlord of such land, use any portion there-of for building or any other purpose inconsistent with that for which it was used or let to be used as afore-said: *provided that a ryot may* without such permission erect upon such land a brick-built &c."

'*Such Ryot as is mentioned in Sec.* 16 *or in Sec.* 26.' Are not occupancy Ryots under Sec. 19 to have the privilege?

'*Provided that a Ryot may*'. Is a Ryot holding for less than 3 years entitled to do so? If not, the sentence should be 'provided that such a ryot'.

The right of 3 years' Ryot is not heritable; nor is there any provision that it will descend from father to son; is it even just to such a Ryot to give him the privilege?

Section 36. In what portion of his holding is the ryot entitled to erect his brick-built house with out-offices and houses? A Ryot holds one bigah of land under one Zemindar and 90 bigahs under another. Is he entitled to convert the whole of the former plot into a brick-built house if that plot suits his fancy better? An Ijaradar or Thikadar may not be entitled to build; but he may install in the estate, Ryots who may acquire a 3 years' right. In such case these latter will be entitled to do, what their superior holder, the former cannot do.

Section 38. What is reasonable time under section 38? The matter should not be left entirely to the discretion of the Munsiffs.

'Such landlords *having applied* to the civil court under the provisions of the specific Relief Act, 1877, obtains a mandatory injunction.' The specific Relief Act does not provide for *applications*; but for suits on full stamp. In a large zemindary, where Ryots may take it into their head, to change the use of the land, nothing would suit them better than for them all to do so at one and the same time; thus

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putting the landlord to the expense of so many suits under the specific Relief Act.

Sections 38&39

The provision regarding injunction, compensation &c, will lead to a plentiful crop of litigation.

Section 41.

At present lands are let for building purpose on contract; the usual term in case of men of the status of ryots being that the tenant or his heirs shall not be liable to be ejected; but that they shall not be entitled to sell the building sites. Section 41, makes a reservation in favor of existing contracts in so far as they expressly stipulate against the growth of the right of occupancy: but it does not make any reservation in favor of contracts under which right of occupancy is granted, but its transferability is expressly denied. Such transferable rights are only granted on receipt of a heavy consideration in the shape of a *Nazarana* or *Salami* by the landlord. The provision in fact confiscates the landlord's existing right to such *Nazarana* or *Salami*.

The statutory right given to tenants under this section is entirely new, and unwarranted by the circumstances under which it may be expedient to amend the Law of Landlord and Tenant.

A *Zurpeshgi Thikadar* holds an estate for more than 12 years, retaining the zemindary cutcherry and such parts of the *Bustee* lands as were not in the occupation of the Ryots, under his immediate possession. There is no express stipulation with respect to these lands. On the mortgager's obtaining a decree for redemption of the *Zurpeshgi* mortgage, the Thikadar will be entitled to keep the decree-holder out of possession of all lands coming under the description of this section; and this whether he has built on them or not. N. B. The *Thika Zurpeshgi* combines the character both of a lease and a mortgage.

Section 41 is retrospective in its effect and will at once on the passing of the Act, give the *Zurpeshgi Thikadars*, a class of men, by no means small in this province, some of whom have been holding from a length of time, a statutory right to retain possession of lands described in this section; ten to one there will be found nothing in their *Zurpeshgi Pottahs*, providing against the accrual of such right which by the bye, is to be a *creation* of the new law, and whose creation could not in any case, have been foreseen or anticipated.

Section 42.

The maximum limit of enhancement fixed at 5 per cent of the market value of the land is too low. With reference to this Babu Mohiny Mohun says: "I object to the maximum rent being fixed at 5 per cent of the market value, which I consider to be too low. Nine per cent, would, in my opinion, be fair. As to extending the *principle* of occupancy right to village lands not used for dwelling purposes, and to lands situated in towns (whether used for building or any other purpose) it seems to be entirely out of the question unless wholesale confiscation of private property is intended."

Chapter VII *Section* 45.

The provisions of Sec. 45 effect an important change in the status of Ryots in estates which have escheated to Government. Immediately after escheat, these Ryots, will find to their cost, that though there-after they are *proprietors* paying Government Revenue, they have lost whatever rights they had acquired under the Law of Landlord and Tenant. Of course, the section is not to be construed, so as to interfere with the operation of Act VIII (B.C.) of 1879 which defines and limits the powers of Settlement officers and also the operation of the Public Demands' Recovery Act. The question is whether they have or will come to have greater rights, greater protection under the existing Law of Landlord and Tenant, or greater rights and greater protection under the operation of those laws, which will stand unaffected after the passing of this section? A reference to the provisions of these Acts will convince any one, that the Ryots in Government estates under these Acts are placed absolutely at the mercy of the Executive. Of course, the Executive has no personal interest in enhancing rent or enforcing payment of such rent by coercive measures, and the Ryots in all cases can seek the protection of Government; but is it not a fact that rents in *Khas Mehal* estates are rising from year to year; and is it not a fact, that what in other cases would be called rack-rent, prevails in most cases in Government estates? It will be interesting to enquire, at what rate of rent the Gya

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escheated estates have been settled; and how payment of rent in the case of those estates has been enforced since the time, the estates passed into the hands of Government, and how also and at what rate of rent, the settlement of several Government *Dearahs* (*Khas Mehals*) in Behar has been made? Of course it may not be either prudent or expedient to give to the zemindars, the same facilities for the collection and recovery of rent and for enhancement of the same which Government enjoys with reference to Ryots in *Khas Mehal* estates, but why should not the Ryots in these estates enjoy the same rights and privileges which the Ryots in their neighbourhood in estates under Zemindars enjoy? If again, it be true that Government in view of the refractoriness of ryots, had to guard its own interest, by changing the old laws on the subject, does it behove the legislature to offer a premium to a like growing spirit of refractoriness in Ryots of zemindary estates, by making them further concessions?

Chapter IX *Section* 55 (b)

These instalments shall hardly suit the *Bhowli* lands, where the division is made, or the estimated share of produce paid to the Zemindar immediately after the crops are reaped and gathered and in no case by instalments.

Now as it is proposed to abolish the landlord's power of distraint, should not the instalments be so timed as when the crops are yet in the field that the landlord may have some chance of recovering his rent, by an attachment after suit.

Sections 55 & 56.

With reference to these provisions, Babu Peary Mohun Banerjea says: "The present law allows interest at the rate of 12 per cent on arrears of rent. The Draft Bill takes away the landlord's right to collect rent by monthly *kists*, and yet it makes the rate of interest in some measure discretionary with the courts."

Chapter IX. *Section* 58 (c)

The Bill provides that a tenant who entertains a *bonafide* doubt as to who is entitled to receive the rent, payable by him may deposit such rent in the Collectorate. The provision appears at first sight to be equitable but it will ultimately lead to endless complication. It makes the Ryot, the arbiter of all disputes regarding proprietory possession. One of the members of the Behar Rent Commission justly says on the subject: "It would be practically placing the landlords at the mercy of their Ryots. Some party, whether rightly or wrongly must be always in possession, and the Ryots are bound to pay him rent. By such payment they are also exonerated for all time to come, and the rightful claimants can only recover mesne profits from the party in possession to whom the Ryots have paid. A dispute as regards the zemindary title is thus never prejudicial to the Ryots' interest; it is sometimes advantageous to them. Greater indulgence is not required to be shown to them by the necessities of the case. It is positively mischievous with respect to the zemindars, for under this proposal, even in case of secure possession, the Ryots, specially those inimically inclined, or gained over by the zemindars' enemies, may trump out a dispute and cease to pay rent under the protection of law, thus possibly bringing on a sale of the zemindars' property, and their ultimate ruin"

Section 61.

When one of the several co-parceners in an estate, has sued under the provisions of the Exceptions to Sec 69, and obtained a decree for his separate portion of rents of a tenure or occupancy holding, there will be nothing to prevent him to bring to sale such tenure or occupancy holding under Sec. 61; in fact he will be bound to do so before resorting to any other process. If rent decrees be subsequently obtained by other co-parceners for the same tenure or holding and for the same period, how are these decree-holders to proceed; will there be successive sales of the same holding at the instance of every decree-holder landlord? Sec. 211 ought at least to provide for the satisfaction of such rent claims if there be any, out of the sale-proceeds.

In cases of saleable tenures and under-tenures, the present law provides only that processes against other immoveable property of the judgment-debtor shall not be issued in execution of decree, before the sale of such tenure or under-tenure. The Draft Bill proposes to change the law on the subject; and in cases of occupancy holdings which may not find a purchaser in the market, the effect would simply be to deprive the landlord of his dues decreed even when the Ryot has a valuable crop on

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the field. For by the time, the holding can be brought to sale, the Ryot will be enabled to reap and gather such crop, which the landlord is not entitled to touch, and which the Ryot is at liberty to dispose of, in the best way he can. True, he can do this only once, but unless the landlord was to be the purchaser himself of such occupancy holding under Sec. 207, there would be an equal probability of his faring alike with a successive set of tenants, specially when the landlord is not entitled to demand any security from the purchasers of such holdings.

And here it may not be uninteresting to compare the advantages of an occupancy holding as the Draft Bill proposes to make it with those of a Putney and similar other tenure. First, both are heritable, devisable and transferable; but in the case of the transfer of a Putney, the landlord will be entitled to demand substantial security from the transferee; not so, in the case of the transfers of occupancy holdings.

Secondly. Occupancy holdings with all these incidents attached, will be a statutory *creation*, the landlord receiving nothing for the accrual of such rights in tenants; whereas in cases of Putney grants, the landlord receives a substantial *Salami*, as the consideration of such grant, such *Salami* at times coming up to the amount of full twenty years' purchase.

Thirdly. In cases of arrears of rent, the landlord's remedy in the first place, is by sale of the tenure or the occupancy holding; but in cases of Putney, the landlord will be entitled to bring it to sale twice in a year in a summary way ; in the case of occupancy holdings, he will have to go first through the tedious and expensive process of a rent suit. In the one case, the landlord will have a substantial Putney right to sell; in the other case, the right which the landlord can bring to auction may not find a purchaser.

Fourthly. In all cases, the Putney is sold free of all 'incumbrances ;' occupancy holdings will be sold free of incumbrances only on special application and under special circumstances. (Vide Secs. 206 & 207.)

Fifthly. And in the above circumstance the landlord, has an additional guarantee for the prompt discharge of his rent dues, by the holders under the Putneydar. This guarantee will be wanting in cases of occupancy holdings.

The only advantage (an insignificant one after the various limitations imposed on the landlord's power of enhancement) which the landlord will have in the case of occupancy holdings being, that in this case he will have some prospect of increased rent after each 10 years.

Chapter X. *Section* 65.

When the co-parceners of a joint estate, have by agreement with other co-parceners and tenants or otherwise, been in separate receipt of rents from the Ryots, the internal zemindary management of the estate, so far as the collections of rent are concerned must be considered as separate. Section 65 does not provide for such a case.

'*When co-parceners, who jointly own an estate, tenure or under-tenure &c.*'

Babu Mohiny Mohun says with reference to this section : "Persons out of possession having claims to a share in property, will largely resort to these provisions for the purpose of obtaining a recognition in some shape, of their claims or of harassing their adversaries." The section, if it is to be retained, should at least be so worded as to prevent this.

Babu Peary Mohun says: "The necessity for investing the District Courts with the power of appointing a Manager for the management of an estate or tenure held by two or more co-parceners, when even a single ryot, or the owner of an infinitesimal share, chooses to apply for such an appointment, has not been made out. The decision recently passed by a Full Bench of the High Court, recognizing the power of every co-parcener to have his share of the rent apportioned by a suit in court, will remove all sources of annoyances to the Ryots of joint estates and tenures, and of disputes among the co-parceners themselves. The proposal for the appointment of Managers by court is therefore uncalled for. A similar proposition started at the time of Sir George Campbell was looked upon with disfavor by the executive and judicial officers who were consulted about it, and it was abandoned after a thorough discussion of its merits and demerits. It is certainly not desirable that the mediæval passion for superceding the independent conduct of every man's affair by officious legislation in matters relating to land should not be revived." It is to be feared that in districts, where the judges

may like to exercise a little patronage by appointing Managers, the management of estates will in most cases in such districts, pass out of the hands of their lawful owners.

Sections 65, 66 & 67.

The effect of these provisions will be to reduce the real owners to the position of mere annuitants upon their estates. The managers cannot have that interest in the management and improvement of the estates which those personally interested can have; and as it is very essential to the agricultural prospects of this province, specially in estates where *Bhowli* tenure abounds, and where it is necessary at seasons for landlords to advance money out of their pockets to the ryots for the successful prosecution of agricultural industry, that such personal interest should be taken, it is to be feared that agriculture would suffer. Nor is it very likely that the managers appointed by the district courts are likely to prove better men than the zemindary village Amlahs; the salary which could be given, is not likely to tempt a first class set of men; and the men that would ordinarily be appointed as managers, carrying with them, the authority of the district courts, will, when venal, be not satisfied with the paltry douceurs now received by the village Patwaries from the Ryots. There will again be no check to their corruption and rapacity on the spot, as they will be placed above the control of the landlords, and will be only removable by the order of the district courts.

It is usual that when an estate is managed for the real owners, by Government servants, no sale for arrears of Government revenue takes place. Will not the principle of this practice be applicable in this case also?

Chapter X. *Section* 69, *Exceptions* (1) & (2).

When rent decrees have been obtained by co-parceners for their separate share of rent in cases coming under Exceptions (1) and (2) of Sec. 69 Chapter X, will the provisions of Sec. 64 regarding the sale of such tenure, under-tenure or holding in the first instance, be applicable? If so, the law ought to provide for the protection of the interest of the other co-parceners.

Section 73.

Under Sec. 73 landlords are bound to put and maintain tenant in possession. The section provides "that this duty extends only to interruption or disturbance by the landlord or any one *claiming under* or *paramount to him.*" A landlord lets out his estate in *Thika*; if the relation of landlord and tenant can be said to subsist between him and the Ryots after the date of the *Thika*, it does not appear, how the landlord, on whom a legal obligation is thrown under this section to maintain the tenant in possession, can intervene between the Thikadar and the tenant to protect the latter from forcible dispossession, by the former. It may be that the landlord, can do so, in certain cases, when he is empowered to do so, by the cancelment of the *Thika* lease; but when he has not reserved this power or where the *Thika* has been given by receiving an advance, the landlord will be unable to do so. The case will be still worse, when the person dispossessing the Ryot is a tenure or an under-tenure holder with permanent right under the Zemindar. The law does not arm the Zemindar with any power under which he could intervene for the protection of the tenant. If the obligation under this head, carries with its breach as a consequence, the inability to recover rent from the dispossessed tenant, it means nothing in a case where the landlord has parted with his right to recover such rent to a Thikadar or tenure-holder; but if it carries with it other consequences, as liability to pay damages &c, the law imposes upon the landlord an obligation which it will not be in the power of the landlord to fulfil when the person dispossessing the Ryot is any one else than the zemindar himself.

Does the word 'lease' in sections 71 and 74, include Ryoti lease, and could a person having a limited interest in land, grant a right of occupancy lease to a Ryot?

It would seem from Explanation 2 of Sec. 19, and the spirit of Sec. 74, as if a right of occupancy cannot be acquired by holding under a person with a life interest in an estate.

Section 77. (*a*)

It would appear by reading this section along with Sec. 36, that a tenure or an under-tenure holder is not to be entitled to build a dwelling house, within a portion of land forming his tenure or under-

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tenure, if he has not obtained the landlord's permission to do so; or if such lands which form his tenure or under-tenure has not been customarily used for building purposes. Is their any reason why this right should be denied to him, when such right is granted even to three years' Ryots?

Section 77 (*b*) A Ryot plants trees in his *Bhowli* holding and delivers to the landlord as rent, a portion of the produce. Is the Ryot to have the right to cut down and appropriate trees under this clause with respect to such trees? It will be difficult to determine in many cases by whom the trees have been planted. In Behar, the palm and other fruit trees though situate in a Ryot's holding belong exclusively to the Zemindar.

Section 79 (4) By having to wait for a year after the date of abandonment before the tenancy can be determined and settlement made with other Ryots, the landlord loses his rents for the year. A decree in such a case will be a mere paper decree; but in cases of *Bhowli*, perhaps even this paper decree will not be obtainable.

Section 79 (9) This section and every other by which a shorter period of limitation is fixed, should not have a retrospective effect. A period at least should be fixed within which suits in which causes of action have accrued previously, and in which a longer period of limitation is allowed under the present law to sue, may be brought after the passing of the Act.

Chapter XII. The system of Ryoti tenures in Behar is very simple and well suited to the peculiar circumstance of this province, 'where a large portion of the land is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than good ones. The ryots having no capital, and being an improvident race would be ruined by one or two bad seasons, if they had to pay fixed money rents.' There is again the method of storing rain water and its economical use by means of *Ahars* (reservoirs), *Alangs* (embankments), *Pynes* (water-channels), and Bunds which are peculiar to Behar. Some crops are raised entirely by means of artificial irrigation. It is essential therefore that the landlord who alone has the means and power to keep a proper supply of water for the village cultivation, should have a joint interest with the Ryot in the improvement of the soil. The Ryoti tenures * which are peculiar to this province seem to have originated in this circumstance.

* Ryoti tenures in Behar are classified on various principles. One classification is made with reference to the length of the ryoti holding: another with reference to the incident of the place of residence of the ryots, and a third with reference to the mode of payment of rent. Under the last method all ryoti holdings are divided into two classes, *viz*, *Nukdi* and *Bhowli*. When the payment of rent is made in cash, the tenure is called *Nukdi* (from *Nukd* cash). When the payment is made in kind the tenure is called *Bhowli* (probably a Hindi compound made up of *Bhow*, rate price, and *wali*, pertaining to.) The *Nukdi* tenures are of several classes known by distinct names; the most important of them being *Nukdi* proper, *Balkut* and *Hastbood*. The tenure is called *Nakdi* proper or *Chikkut* when the cash rent fixed previously is paid for every bigah of the holding without any regard to the produce. The *Balkut* (from *Bal*, ears of corn, and *katna*, to cut) is the kind of tenure where the rate of cash rent per bigah is determined on an inspection of the actual produce of the fields, and this rate charged for every bigah of the ryot's holding. The *Hastbood* is the kind of tenure when the rate of rent is fixed previously; but the ryots are liable to pay rent at that rate for those plots of land only where the harvests grow. Thus if a ryot holds twenty bigahs of land, and the tenure is *Nukdi* the amount of rent, the rate of which must in this case have been fixed previously, say rupees five per bigah, would be one hundred rupees; but if the ryot held the same quantity of land in *Balkut* tenure, the rate of rent would be determined only after an inspection of the actual produce of any one harvest, and supposing the rate then to be determined at Rs. 6 per bigah in one year the amount of rent would be Rs. 120, and supposing the rate to be determined at Rs. 4 the next year, the amount would be Rs. 80. And if the rate of rent be at five rupees per bigah, and *Khariff* has grown in 8 out of 20 bigahs, and *Rabbi* in 5 out of 20, the amount of rent payable, in case the tenure is *Hastboodh* would be Rs. 65, and if in another year, *Khariff* grows in 12 bigahs and *Rabbi* in 13 the amount of rent payable is Rs. 120, and this irrespective of the amount of produce. There is another kind of *Hastbood* tenure which is peculiar to certain pergunnas, and in this there is a combination of the two kinds of payment. Thus a *Nukdi* rental is previously agreed on, and it is understood that a certain percentage of the ryots holding is to be held in *Nukdi*, and the remainder in *Bhowli Agorbatai*. The Ryot has in this case the right

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It may be that the nature of these tenures makes the Ryot a little too dependent on the good will of the landlord, but the landlord also is dependent in a great measure on the honest exertion of the ryot for the security of his rents. The interest of both are bound up together by the circumstances of the case and the nature of the tenures, and there does not appear to be anything intrinsically wrong in the system. The peculiar advantages which recommend it to the people of this province have to be only set off against any fancied evils, and it will be readily seen that customs which have originated in the necessities of the people, and which have prevailed from generation to generation, should not be hastily condemned or done away with 'by a stroke of the pen.'

The Commissioner of Patna writing to the Secretary to the Board of Revenue on the 21st August 1858 said :

"It may very probably be thought by those who have had no experience in this part of the country that payment in kind or the mixed payments which form the peculiarity of the *Bhowli* tenures, should be discouraged as much as possible and should not be sanctioned by the Legislature, but this would be a very great error. A large portion of the land of this province is entirely dependent on rain for its fertility. In good seasons it yields heavy crops, in bad ones next to nothing; and bad and indifferent seasons are more common than good ones. The ryots having no capital and being an improvident race would be ruined by one or two bad seasons, if they had to pay fixed money rents. Under a *Bhowli* or *Batai* system on the contrary, where the rent is proportioned to the produce, they can always rub on, and if they have not much opportunity of making money, they are tolerably secure from ruin. These tenures are therefore very popular, and when the landlord is a just man, are perfectly satisfactory to all parties. Any attempt to abolish them would create great discontent."

Nor are these the only advantages that arise from the peculiar nature of the Behar tenures. Enhancement suits and disputes arising out of the landlord's power of distraint are not much known here. Sir John Shore writing in 1789 regarding the Behar tenures, says;—(minute page 21). "The great point required is to determine what is, and what is not oppression, that justice may be impartially administered according to fixed rules in Behar. The variations in the demands upon the ryots are not so great as in Bengal; the system of dividing the produce affords a clear and definite rule wherever that prevails, and Regulations need not be so minute as those which I proposed for Bengal."

Another advantage arising out of the

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to select the best lands called *Joiet* (best) for the *Nukdi* payment.

The Bhowli tenure is of two kinds (1) *Agorbatai*, (2) *Danabandi*. *Agorbatai* (from *Agora*, watching, and *Bantna*, dividing) is that kind of Bhowli tenure where a division of the crops is made in predetermined proportions between the landlord and the tenant. When the crops are yet in the field and ready for reaping, the landlord appoints *Agroras* (watchmen) to watch that none of the crops are fraudulently made away with. When ripe, the crops are gathered in the *khalians* (threshing floors) which are places usually set apart for this purpose near the *Basti*. The charge of reaping, (one out of twenty one bundles gathered) is paid out of the entire produce, and the remainder then, after threshing and cleansing, is divided in predetermined proportions between the landlord and the tenant. The usual proportion is half and half; or 9 ans. to the landlord and 7 ans. to the tenant out of the 16 ans produce. The *Danabandi* literally means a cursory survey or a partial measurement of field, or weighment of the crop, to ascertain the value of the crop and the amount of assessment. These proceedings which are antecedent to the final determination of the landlord's portion, give the name to the tenure itself. The *Danabandi* is made when the crops are yet standing in the fields and when they are almost ripe for cutting. A party consisting of a *Salis* (arbitrator) an Amin (appraiser) attended by the Patwari, Goomashta and other village Amlas, go about in each field and appraise the produce in maunds. At first the *Salis* makes the estimate, but if the ryot is dissatisfied with the estimate, the *Amin* is referred to. The estimate having been once made, everything is left to the ryot himself; the landlord or his Amla has then nothing to do with the standing crops. They are reaped and gathered by the ryot who may pay the zemindary portion of the estimated produce either in kind, or the price of this according to the price current, in cash. The Zemindar's share is usually either half or 9 ans. out of the 16 ans. of the produce. The *Battaia dana* is merely a modification of the last mentioned method, the difference being that under this system the *Salis* and the *Amin* do not go to the field to appraise the out-turn but the landlord's Amla and the ryot come to an understanding about this at a sitting in the Zemindar's Cutchery.

nature of these tenures which give a joint interest to the landlord and the ryot in the produce of the soil, is the freedom of this province from that system of sub-infeudation which prevails to such a large and mischievous extent in Bengal, and under which the Zamindar is a mere annuitant upon his land, the profit being divided among a number of middlemen.

There is therefore nothing in the nature of these tenures which could in any way connect them with the alleged poor and depressed condition of the peasantry of this province as cause and effect. The question remains whether under these tenures the ryots are rack-rented? It is said that in cases where under the *Bhowli* tenure, the landlord leaving all risks to the cultivator receives more than half the gross produce, his profit is *obviously inordinate.* The conclusion here is based on a wrong premise as to all risks being left to cultivators in *Bhowli* tenures as will be shown in a subsequent portion of this note; but allowing the premise to be right, the Committee feel sure that those who are acquainted with the peculiar circumstance of the case, will never pronounce the proportion to be in any way inordinate. In *Bhowli* as well as in *Nakdi* tenure it is not probable that each bigah of land shall yield its produce every harvest. But whereas under the *Nakdi* system each bigah must pay its quota of rent every year, in *Bhowli* the landlord's share is of the actual out-turn of the lands which yield a crop. The nine-anna proportion, therefore, if distributed as rent over the entire quantity of ryots holding—lands which yield and lands which yield not,—will instead of being obviously inordinate, be *obviously low.* This will appear by reference to actual figures. *Bhowli* tenures prevail to a large extent in Gya. In that district the total Road cess in 1877-78 was Rs. 108,830. This represents a total district rental of Rs. 3,482,560. Compare this with the case of the following districts by far the most advanced districts in Bengal viz; Nudden, Jessore, Moorshedabad, Dacca, Faridpore, Bakergunge and Mymensingh. In Nudden the amount of Road cess was Rs. 102,492 representing a total rental of Rs. 3,279,744. In Jessore, Moorshedabad, Dacca, Faridpore, Bakergunge and Mymensingh the amounts of Road cess are 107158,84639, 74495, 55115,159574, & 156978 rupees respectively, which represent in these respective cases total rentals of 3428960,2708448, 2283840,1763680,5106368,&6023296 rupees. The Statistical Reporters of the district of Gya will show that the cultivated area in Gya comes up nearly to the total area of the district; for the purposes of a rough calculation therefore, we will divide these total amounts of district rentals by the total area of these districts. The following table gives the result showing that the average rent per square mile in Gya, is lower than in the 7 districts of Bengal named above :—

District.	Amount of Road cess.	Total district rental.	Total district area.	Rental per square mile.
1	2	3	4	5
	Rs.	Rs.	Square miles.	Rs.
Gya	108830	3482560	4716	738 nearly
Nudden	102492	3279744	3421	958 "
Jessore	107155	3428960	3658	937 "
Moorshidabad	84639	2708448	2642	1100 "
Dacca	74495	2283840	2796	820 "
Faridpur	55115	1763680	2249	784 "
Bakergunge	159574	5106368	3648	1399 "
Mymensingh	156978	6023296	6299	956 "

The figures in column 2&4 are taken from the Administration Report of 1877-78.

It is noteworthy also that this proportion is gradually being adjusted to the changed circumstances of the times. In Sarun where the tenants paid rents in kind, the Zamindars at the time of the Permanent Settlement bound themselves not to take more than 1 maund 22½ seers from a maximum estimated produce of 2 maunds per bigah. (Vide Statistical Reporter Vol XI p. 301.) The present custom where

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payment in kind exists, is for the produce to be divided equally, and if there be no violence done to it by legislative action, there is reason to suppose that further modifications in favor of the ryot may not improbably take place. It has to be borne in mind that in the face of a growing demand for land to meet the requirements of an ever-growing population, these changes indicate an amount of good will of the Behar Zemindars towards their ryots for which they usually receive no credit.

The following table showing the average rate of money rent per standard bigah has been culled from the Statiscal Reporters.

District	Average rate of rent per bigah.		
	Rs.	Ans.	P.
Patna.....	1	6	8
Gya	,,	11	6
Shahabad	1	,,	8
Durbhunga...	1	2	,,
Mozufferpore .	1	8	2
Sarun..... .	1	7	1
Champarun...	,,	14	6
Nuddea	,,	15	,,
Jessore..... .	,,	14	10
Moorshedabad .	1	,,	7
Dacca	,,	14	5
Furidpore	,,	12	,,
Bakergunge ..	1	6	5
Mymensingh...	,,	15	,,

The above table shows the average *Nukdi* rent per bigah in some of the important districts of Bengal and Behar. If the result appears to be more favorable to the Bengal ryots than to the ryots of Behar, the reason is not far to seek; it is only the best lands in Behar that are held in *Nukdi*, the inferior class being oftener held under *Bhowli* tenure. These *Nukdi* lands of Behar never yield less than two crops, whereas a cultivator in Bengal scarcely raises more than one crop from his land. It will perhaps be asked why then are the actual cultivators of this province poor and poverty-stricken, and why every famine brings them to the point of starvation? No statistics, so far as the Committee are aware, are available to show whether the actual cultivators of this province had to seek gratuitous relief, or to engage themselves as day-labourers on Relief works, during the famine of 1873. During the worst months of the famine year *i. e.* July and August, some of them had to seek for grain advances, which they contracted to pay back by yearly instalments and that is all the measure of relief they required and received. (Vide Sir Richard Temple's Famine Minute). But it must be remembered that the famine of 1873 was exceptional in its character. It had been preceded by years of bad harvest.

It was the great landless class that received most of the State Relief, and it is this class which, compared with the corresponding class in Bengal is really poverty-stricken. Neither the Zemindar nor the system of land tenure has, however, anything to answer for in this matter. But the mistake is too often made that in describing the actual condition of Behar, whether in official reports or sensational pamphlets, the distinction between this class and the actual cultivators is often lost sight of. On examination it will be found that there has been a greater up-heaval of the masses in Behar than in Bengal, simply owing to their connection with land. Fifteen-sixteenths of the cultivating classes in Behar are drawn from the castes of Kurmis, Koeris, Ahirs (Goalas), Rajputs and Babhuns. Kurmis and Koeris are exclusively a cultivating class. It is well-known that these castes depend for their livelihood on owning or holding land as cultivators or owners. Only a few of them in towns serve as gardeners, but even there, they hold some lands as cultivators on their own account and regard service as supplemental and subsidiary. There is no doubt that the class is daily prospering, as it should, for there is hardly another class of industrious peasants to be found like it in the rest of India. Several of these peasants have now risen from the position of mere cultivators to that of owners or farmers of land, and it is they who are the money-lenders in their villages. The Ahirs (Goalas) who form fully a sixth of the population of this province are, besides their caste occupation of tending cows and buffaloes, in many cases cultivators. There are many persons of this class who are now owners of estates or prosperous farmers. The mere cultivators are not at all badly off, and though not as industrious as Koeris and Kurmis, they make out a good livelihood by supplementing the produce of their fields, by what they get by tending their cows and buffaloes. As a rule they are addicted to strong drink and it is on this account that they are found, though in very few cases to be in

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poverty. The Babhuns and Rajputs are owners and farmers of estates and are also cultivators. They never cultivate with their own hands, but have their cultivation done by hired servants. As cultivators they are the veritable terrors of their landlords and it is doubtful whether there is a corresponding class of prosperous middlemen in Bengal like these Babhun and Rajput cultivators of Behar. To us it appears to be a gratuitous assumption to hold that the ryots of Behar are worse off than the people of their class in other parts of India or that they are weaker than their landlords. * If they are at times found to be in debt, the reason must be sought for to a great extent, in that great stimulant of Hindoo extravagance—marriage expenditure.

That the above is the plain truth is also clear from the fact, that the condition of these ryots, far from deteriorating, as it would do, if there were anything intrinsically wrong in the system of land tenures, is gradually improving year by year.

The present situation is thus described by the district officers of Behar: the Committee quote from the Resolution of Government on the Administration Report of the Patna Division for the last year. Mr. Metcalfe, writing of the Patna district thinks "that the position of the better class of agriculturists was favorable; prices were fair; trade brisk; rents easily paid; and cattle dear. This class is learning to have more confidence in its strength, and to resist undue or illegal demands on the part of the Zemindars. Among the lower classes of peasants and the agricultural labourers, there was no material improvement, except so far that a good harvest, and plenty of work placed them temporarily beyond the reach of want, and gave them larger means of indulging in country liquor."— The last portion of this statement touching the condition of the lower classes of peasants, throws some glimpse on the real cause or causes why a wide-spread misery over-takes these classes of people in every year of bad harvest;—their want of economical habits in years that are good. *

With reference to Gya, we have that "the agriculturists have benefitted by good crops and a brisk export trade in grain. But the *Bhowli* system is said to press heavily on the cultivators, preventing any thing like permanent improvement. There has been a good and growing demand for labour which has helped the poorest classes during the past year." The poorest classes in Behar, thus are not the agricultural classes, but the great *landless* class, and evidently the alleged proverbial poverty of Behar is to be attributable to other causes than to the defects of the land tenures. † As for *Bhowli* tenure pressing heavily on the cultivators, and preventing anything like permanent improvement, the Committee having already shown how the facts stand, beg to submit with due deference, that this is one of those prejudices against things which are not *English*, from which unfortunately, very few of our statesmen are free. To those who are for abolishing the *Bhowli* tenure by 'a stroke of the pen' the Committee beg to say in the words of Mr. Mill that "the Metayer tenure is not one which we should be anxious to introduce where the exigencies of society had not naturally given birth to it; but neither ought we to be eager to abolish it on a mere *a priori* view of its disadvantages." ‡ The Committee show elsewhere in their note, how in several respects the *Bhowli* tenants of Behar enjoy greater privileges than the Metayer tenants in

* It may be interesting to those who are under the impression that the Ryot in Behar is the weaker and the landlord the stronger party, to know, that here the germs of a *land-league*, with the best of organizations, already exist in the Punchsits; a Koiri or Kurmi would be visited by his Punchait with the severest social punishments if he were to take a settlement from the landlord of lands out of which a brother Koiri or Kurmi has been ejected.

* The district of Patna pays a greater amount of excise revenue, than any of the other districts under the Lieutenant-Governor of Bengal With a population of 1,559,638 the district of Patna pays an excise revenue of Rs. 477,913, whereas Nuddia, with a population of 1,812,795 pays an excise revenue of Rs. 115,815 only; and the districts of Jessore, Murshidabad, Dacca, Furreedpore, Backergunge and Mymansingh, with populations of 2,075,021; 1,349,660; 1,870,256; 1,502,436, 1,887,586; &2,349,917 pay an excise revenue of Rs. 83,669; Rs. 166,281; Rs. 161,295; Rs. 42,312; Rs. 73,512; and Rs. 224,607 respectively. The other districts of Behar pay a comparatively greater amount of excise revenue than the districts of Bengal. These figures are taken from the Administration Report of 1878-79.

† The great populousness of the Behar districts and the low rate of wages account in a great measure for the poverty of the great landless class.

‡ (Mill—Political Economy Vol. I. p 388.)

continental Europe, and how (notwithstanding English prejudices on the subject,) the European Metayer tenancy has been pronounced as one of the best tenancies by those who are well acquainted with the subject. *

Of Shahabad, Mr. Edgar writes:—"The material condition of the people in Shahabad is gradually improving owing to the canals, rise of prices, and improved communications. Last year a good harvest added to the causes enumerated above, led to an improvement of the condition of the people. The decrease in crime and increase in drinking are unerring measures of the prosperous condition of the people. In illustration of the prosperity of the agricultural classes in Shahabad, I would note that the cane cultivators in the district have, with a view to introduce an improved method for the manufacture of molasses bought 9,000 of the Behea Mill patented by Messrs Thomson, Mylne and Co., at an outlay of Rs 6,30,000. This is the result of the impetus which the canal irrigation has given to the cultivation of the sugar-cane. Before the opening of the canals the area under cane cultivation was only 1,804 acres, whereas it has now increased to 22,000 acres, or nearly twelve times the area previously cultivated. This increased cultivation of sugar-cane has added considerably to the agricultural wealth of the district, the increase of profit derived from this source being estimated at no less than Rs. 473,000 per annum." And yet the same system of land tenures prevails in Shahabad, as in the rest of Behar and though Shahabad peasantry admittedly enjoy this exceptional amount of prosperity, the several changes proposed by the Rent Law will apply to them as to the rest of the peasantry in Behar.

In Tirhut Mr. Worseley admits a temporary improvement, but remarks that "under the existing conditions of agriculture, rent and population no permanent improvement of the condition of the agricultural classes can be looked for. At the same time it appears that both here and in Durbhanga many ryots are now fairly well-to-do." These many ryots found *fairly well-to-do*, live under the same system of land tenures as the rest of their fellow-peasants, and the Committee beg to repeat what they have observed in this note elsewhere that the customary rent under *Bhowli* tenure which prevails to a great extent in Tirhut as in the rest of the districts of Behar has always remained unaffected to the Ryots' disadvantage by the ever-growing increase of population. This is its peculiar advantage, and ought to be taken into serious consideration by those who would abrogate the custom and commute a *Bhowli* into a *Nuzdi* tenure.

Mr. McDonell's observations regarding Sarun are as follow:—

"Before I came to Sarun, I was aware that it was the most densely populated district in Behar, and the most highly cultivated. My information also was to the effect that the material condition of the people was low; and the mental impression thus created was strengthened by what I had read in the Government Review of last year's Administration Report, and by the note on this head which my predecessor recorded for my information. The note was very expressive. 'The natural condition of the people' said Mr. Pawsey 'has been as bad as could be, short of actual starvation!' I was therefore prepared to find in Sarun, even greater poverty than I had found in North Behar.

* "The metayer system has met with no mercy from English authorities. 'There is not one word to be said in favor of the practice' says Arthur young 'and a thousand arguments that might be used against it.' * * * 'Wherever it (the metayer system) has been adopted' says Mr. M'Culloch 'it has put a stop to all improvement, and has reduced the cultivators to the most abject poverty.' Mr. Jones shares the common opinion &c." (Mill's Political Economy Vol. I. p. 376.)

Then after quoting the testimony of M. De Sismondi and other continental writers as to the advantages of a metayer system, Mr. Mill says: "I do not offer these quotations as evidence of the intrinsic excellence of the metayer system; but they surely suffice to prove that neither 'land miserably cultivated' nor a people in 'the most abject poverty' have any necessary connection with it, and that the unmeasured vituperation lavished upon the system by English writers, is grounded on an extremely narrow view of the subject." (Mill's Political Economy Vol. I. p. 338). The impression of the English writers seems to be chiefly derived from France and France before the Revolution. In France under the old *regime*, the exemption of the noblesse from direct taxation had led the Government to throw the whole burthen of their ever-increasing fiscal exactions upon the occupiers; and it is to these exactions that Turgot ascribed the extreme wretchedness of the metayers. (Vide Ditto p. 377.)

"I have had a good deal of experience in the way of enquiries into the condition of the people in this province. In the course of such enquiries I have at one time or another travelled over all North Behar, Chumparun excepted. Since I joined this appointment I have seen every thing Sarun has to show in the way of varying conditions of social and economic life. The result is this: My first visit to the interior produced on my mind the impression that compared with his fellow subjects across the Gunduck and Ganges, the Sarun Ryot was a well-to-do man, and every day that has passed since has brought to notice something or other confirmative of that first impression."

Mr. McDonell is one of those able and experienced district officers of Behar, whose opinion always commands respect, and whoever the officials may be who are, in Mr Mackenzie's remarks p 110 Report Vol. I, said to be 'glad to do them (the Zemindars) favors, and (to) find it pleasant to be on friendly relations with them', Mr. McDonell is not surely one of those officials. For the rest, Mr. McDonell's statement while exposing the great danger of prejudices and hasty generalizations ought to convince the legislature, how its action (actuated by the best of motives) may prove mischievous if not based upon a thorough examination of 'the varying conditions of social and economic life'.

In Chumparun there is a decided increase of cultivation and a brisk export trade, which is improving the position of the cultivators.

The Officiating Commissioner, Mr. Edgar in summing up the district Reports thus states his general conclusions:

"I have made unusually full quotations from the district and sub-divisional Reports because they seem to me to show, in spite of considerable variations of opinion, that the keenest and closest observers discern a decided improvement in the condition of the people, and this coincides with the result of my own observations. Of course, in dealing with so large and complex a subject as this, there is great danger of making untrustworthy generalizations from insufficient data, and the difference so often found in the condition of tracts neighbouring to one another warns us of the folly of making sweeping statements to cover all the facts of an area so great and so varied as that of Behar. Still while keeping these considerations full in view, I can state with some confidence that all the available evidence seems to point to a steady improvement in the material condition of the people throughout the division. In some places this improvement may be scarcely appreciable, and in most places it may be slow; but in others again it is well marked and comparatively rapid. I would ascribe this mainly to the improvement of communications, and to the consequent rise of the price of agricultural produce; but I think it is also in some measure due to a gradual, but very real, awakening of intelligence among all classes of the people."

In reviewing the Report, the Government Resolution states: "The Lieutenant-Governor trusts that there are really symptoms of some amelioration in the state of things in Behar, though it may be long ere the condition of the province becomes thoroughly satisfactory. Forces are, however, undoubtedly at work that must in time bring about a decided change. Education, trade, Railways, and canals, are all producing their natural effect; and they will do this the more readily if the Government finds itself able to remove in some degree the obstacles which now lie in the way of the progress, enlightenment, and material comfort of the peasantry."

Nowhere is it more true than in Behar, where the *Bhowli* tenure, orginating, as has been shown, in the exceptional circumstance of the province prevails to such a large extent, that the interest of the landlord and tenant is identical; and nowhere else in Bengal, will the Government find the enlightened portion of the Zemindars more willing to co-operate with Government, in removing the obstacles which lie in the way of the progress, enlightenment and material comfort of the peasantry; for next to the sense of this identity of interest, it is the characteristic of the Zemindars here to court always the good opinion of the authorities. Already some advances have been made in this direction; in large zemindaries, not only have the system of accounts undergone a thorough change; but the system of counter-foil receipt, now required by the Draft Bill has been already introduced. The short lease Thikadary system, a legacy of the past

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has been in some cases entirely done away with, and proper checks introduced to protect the Ryots from the rapacity of the village Am'ahs. In short, since the last few years whenever any thing wrong has been pointed out in their system, the Behar Zemindars have not been slow in introducing reforms; and when the present laws are admitted on all hands to be sufficient for the protection and welfare of the Ryots, and are undoubtedly such, that consistently with the existence of present zemindary rights a greater land law reform is not possible, and at a time, when the Ryots are awakening to a sense of their rights and the landlords by no means inclined to look on this with disfavor, it can hardly be expedient to unsettle the law, and to make the landlords jealous of the rights of their tenants. 'The great point', to use the words of Sir John Shore, 'required is to determine what is and what is not oppression, that justice may be impartially administered according to fixed rules in Behar.' This was said in 1789; and the great point now as it was then, is to administer impartial justice, to visit real causes of oppression with condign punishment, and not to introduce a land law reform which while abrogating customs on a mere *a priori* view of their disadvantages, will be tantamount to confiscating half the zemindary rights.

In their Report on this chapter, the Commissioners set forth: "The Behar system is really a Metayer system with most of its worst features and few of the advantages enjoyed by tenants of this class in continental Europe. The European Metayer is usually secure in the possession of his land and is certain at least of half the gain resulting from any improvements which he makes by his own labor or capital. His landlord furnishes half the plough cattle in some places, and in other, half the seed. In many places a house is kept up for him. Thus he receives considerable assistance towards producing the crop in which he and his landlord are sharers. The Behar Ryot on the contrary gets nothing but the bare land; his possession is insecure, and he has no incentive to improvement, while the petty oppressions practised in collecting a rent in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone."

It is submitted with due deference that the statement that the Behar *Bhowli* Ryot gets nothing but the bare land, is erroneous. The fact is that in more than one particular, the *Bhowli* Ryot in Behar receives substantial assistance from the landlord in producing the crop; thus the landlord pays for the *gilandazi* (earth-works); he constructs *bunds*, excavates *Pynes*, buys water for the rice crop where it is necessary to buy such water from a neighbouring proprietor, digs tanks and wells and keeps the old ones in repair, pays for the construction and periodical repair of the field and village channels, and also for all arrangements for the proper drainage of the land. He has frequent dispute with the neighbouring proprietor with respect to some one or other of these matters and the cost of the litigation is entirely his. Thus the cost of all the material improvements of the land, so far as they are known and practised in India, falls on the landlord. The average annual expenditure on these heads, is not inconsiderable. In most agricultural villages, the house in which the Ryot lives, is built at the expense of the landlord, and the Ryot gets *bamboos* and sticks periodically, free of charge, to keep it in repair. He pays no *Mataharfa* (ground-rent) for the site of his house or even for the house which the landlord constructs for him. He gets a portion of the *Sayers* (fruits, fishes &c.) of the village without paying any rent for the same. At the time of the distribution of the crops, in addition to the *Nyari* (straws)—a valuable commodity with paddy crops—the Ryot receives all the *Powal* (hay) and *Bhusa* (husks) for use as fodder for the cattle employed in the husbandry. The grazing commons, the pasture lands of the village, are in the Ryot's use, free of rent. The landlord thus bears all the burden of feeding the cattle. In bad years, which are more common than good ones, the Ryot receives a *Tuccavee* advance from the landlord for the purposes of cultivation. In *Agorbattia* system, the landlord furnishes the *Agora* (watchmen) to watch the crops, and he alone pays the wages of these men. How the case is with the *Metayer* tenure in continental Europe the Committee are not aware; but in Behar under a *Bhowli* tenure, the landlord

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gets only his share of the actual out-turn of the quantity of land which the Ryot cultivates. Suppose, the Ryot holds 100 bigahs and he cultivates only 50 bigahs. The Zemindar gets for his share, the produce of the 50 bigahs only; and he prefers no claim for rent for lands which are left uncultivated. Damage suit on this head is unknown in Behar and though this condition of things may at times lead to forcible ouster in cases where the Zemindar sees that the Ryot leaves his land intentionally and negligently uncultivated, in the majority of cases, the Zemindar acquiesces in this state of things without a grumble, and the *Bhowli* tenant is as much secure in the possession of his holding as the metayer tenants are in continental Europe. *Bhowli jumabundis* will show, the variations from year to year, of the actual quantity of land from which the Zemindar receives his rent. A variety of circumstances which do not at all affect the Zemindar's rent-roll under a *Nukdi* system, raise or diminish the amount of the landlord's rental under a *Bhowli* system; so that if, to use the words of the Report 'enhancement on the ground of increase is a stern reality to the Ryots of Behar,' it is also no less true, that diminution of rent on the ground of vicissitudes of season and various other causes is a stern reality to the landlord in this province; and the landlord can only keep his own by prudently managing to counterbalance his loss in one year, by his gain in the next. *

Turning to the special provisions for Behar, we find that the first

Section 81. of these provisions runs thus:

"Every Ryot, who on the day of is in occupation of land other than *Zerat* land, and has occupied the same continuously for the 3 years next preceding such date, has a right of occupancy in such land which he has so occupied for three years continuously, if during each of the 12 years next preceding such aforesaid date, he has occupied any land other than *Zerat* land in the estate in which first mentioned land is included, or in any estate, which with such estate at any previous time formed a single estate." The Behar Rent Commission simply recommended for the enactment of a presumption in the Ryot's favor to the effect that any resident Ryot who has cultivated any land continuously in any estate for 12 years shall be held to have acquired occupancy rights in the whole of his holding in such estate. The presumption would be rebutable and would simply involve a question of *onus* of proof. It would not otherwise materially affect the present law, though of course much might be urged against even this limited change. The Calcutta Rent Commission has cut down the period of occupancy from 12 to 3 years; for the new provision is tantamount to giving occupancy rights to 3 years holding, without any regard to the previous right of the occupant for the preceding *nine* years, or without any regard to the quantity of the land he held. Thus if a Ryot held different areas of 2,4,5,6,8, 10, 12, 3, 7 bigahs as a tenant from year to year during the preceding nine years, and happens to hold continuously 100 bigahs for 3 years immediately preceding the date of the passing of the Act, he will have a statutory right of occupancy with respect to the whole of these 100 bigahs.

The definition of *Zerat* land which comes in by way of explanation under this section unsettles the laws that have hitherto prevailed. Occupancy right was denied to the Ryots holding these lands, by Act X of 1859 and the right is denied to them under the Bill. (Vide Expl. 4, clause (*g*) of Sec. 19).

* Compare this with the case of the metayer tenancy in continental Europe. In Champagne the landlord commonly finds half the cattle and half the seed and the metayer, labor, implements, and taxes; but in some districts the landlord bears a share of these. In Roussillon, the landlord pays half the taxes; and in Guiene, from Auch to Fleurian, many landlords pay all. Near Aguillon, on the Garonne, the metayers furnish half the cattle. At Nangis, in the Isle of France, the landlord furnishes live stock, implements, harness, and taxes; the metayer finds labour and his own capitation tax: the landlord repairs the house and gates; the metayer the windows: the landlord provides seed the first year, the metayer the last; in the intervening years they supply half and half. In the Bourbonnois the landlord finds all sorts of live stock, yet the metayer sells, changes, and buys at his will; the steward keeping an account of these mutations, for the landlord has half the product of sales, and pays half the purchases. In Piedmont, the landlord commonly pays the taxes and repairs the buildings, and the tenant provides cattle, implements, and seed.

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But though this is law in one part of the Bill, it will not be law under the definition of *Zerat* as given in Sec. 81. Suppose A, a rich Zemindar, whose zemindary includes in it, a great quantity of land, which he has held as *Khudkast* or *Sir* land from a very long time, and instead of tilling these by his servants or hired labourers, he has let them out to Ryot B; B, will be entitled to right of occupancy, with respect to these lands, if he held them continuously for the preceding 3 years, and any other bit of land not of this description in the estate for the preceding 12 years, and this notwithstanding the declaration in another part of the Act that no period of occupation will give the right of occupancy to holders of *Nij-jote* or *Sir* lands.

Section 82. The second special provision for Behar is that if a Ryot *agrees* to give up his lands with respect to which he has a right of occupancy, in exchange for other lands forming a portion of the same estate, such Ryot shall have a right of occupancy in the land *agreed* to be received by him in exchange there-for. If he be not a consenting party to such exchange, the law leaves him to seek his remedy in the courts. The provision is intended to over-ride all private contracts. Suppose A, a Ryot, in exchange for two bigahs of lands in which he has a right of occupancy, agrees to receive 50 bigahs of lands on a yearly tenancy; the law interferes, and gives him a right of occupancy with respect to the 50 bigahs; or suppose A, who has a right of occupancy with respect to some lands of inferior quality agrees to accept lands of a superior quality in exchange on a yearly tenancy; the tenancy immediately on the exchange being effected, becomes a right of occupancy. Such interference, with private contracts it is respectfully submitted, will simply clog business of all kinds. Nor does there appear to be any reason why Behar should be treated thus exceptionally. Lands are thus exchanged with the Ryot's consent in Bengal, as well as in Behar, and when the Ryot is a free agent in the matter of this exchange, he no more deserves special sympathy in Behar than he does in Bengal.

Section 83. The Behar Rent Commission recommended that where the proportion of the produce to be taken by Zemindar is not specified in any written agreement, it shall be presumed that the Zemindar is entitled to half, and the Ryot to half. They well knew that in several cases, the Zemindar's share from ancient times is nine-sixteenths of the produce, and they simply intended to provide, that in all cases in which the Zemindar wanted more than half, he would have to produce a written contract. The Zemindar's proportion of the produce, under the Bill, is cut down to half whatever might have been his right hitherto; and unless the Ryot can show a written agreement to the contrary, this proportion shall be presumed to be one-half.

It is said that where, the landlord leaving all the risks of cultivation to the cultivator, receives more than half of the produce, his proportion is *obviously inordinate*. The Committee have elsewhere shown how the remark is based upon incorrect data. It is also to be observed that the proportion received from metayer tenants by their landlords is oftentimes more than half; thus in several districts in Italy it is two-thirds. *

In cases where this proportion is a vested right, and contracts have been entered into on the faith of such right, it will be simply creating confusion of all kinds, if the Legislature were to interfere. Purchases and sales have been made, on a calculation of net profit according to this standard, mortgages have been made and leases effected. The Legislature did not hitherto interfere, and it becomes a serious case of confiscation when now it does.

Section 84. The 'proper officer' referred to in clause (*b*) of this section should not be one below the grade of a Sub-Deputy Collector. If the 'amlah' be told off to this duty, ten to one the award will be in favor of the party who would bid the highest for such award.

Section 86. The provision for the commutation of *Bhowli* into *Nukdi* rental in cases of occupancy holders at the option of either the Zemindar or the Ryot will be a death-blow

* The influence of custom is worth noting. Even in admittedly clear cases of tenancies-at-will under *Bhowli* tenure the landlord's proportion of produce is not more than his proportion in cases where the Ryot's tenancy is of a higher kind; and even in changing one tenant-at-will for another, the landlord alters nothing in the terms

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to the *Bhowli* tenure. In some year, it will be the interest of the Zemindar to seek for such commutation, in other years, it will serve the Ryot's interest better; but it is to be feared, that the interest of both will suffer, in the long run, by such commutation. Payment of rent in kind may not chime in with civilized notions of things; but nevertheless, a custom which has survived the change of ages, and has been handed down from generation to generation, being acquiesced in both by landlords and tenants, must undoubtedly have its uses. *

PART II.

THE PROCEDURE IN SUITS BETWEEN LANDLORDS AND TENANTS.

Section 95 (*a*)

One consequence of a concurrent jurisdiction in enhancement suits, to be vested in the civil court and the Collector, will be that the (plaintiff or applicant) will choose his own tribunal according to the known proclivities of the trying officer.

The first three grounds specially the 2nd and the 3rd can be determined only on evidence directed to each individual case and it is hard to understand, why concurrent jurisdiction should be vested in the civil court and the Collector in enhancement suits based on these grounds.

Where, as in these cases evidence relevant and admissible under the law is to be the basis of the decision and the exclusion of *res inter alios actæ* should be the rule, it is hard to see what advantage, the Collector can have over the civil courts in coming to a right conclusion.

Section 95. (*b*)

On what principle is the *Ijaradar's* right to enhance restricted to the first three grounds and that only by proceedings in the civil courts? Does it not look as if the Collectors proceedings are not likely to be so favorable to Ryots, as the proceedings in civil courts? There does not appear any reason, why the fact and law being the same, the decision of civil courts and that of the Collector should not be the same, and why it should be considered as a favor shown to landlords to place the executive agency of Government at his disposal for purposes of enhancement. As to the matter of cost, while the Zemindar will have to pay court fees in one case, he will have to pay for the pay of the Deputy Collector, and Collector's establishment in the other.

If the Ryot is not entitled to retain all the advantages by a rise in prices when the landlord is other than an *Ijaradar* whose unexpired term is less than 10 years, why should the case be otherwise where the term is less than ten; specially when the other grounds of enhancement are left open to him. If the provision is meant to discourage the *Thikadary* system in Behar, the end is not likely to be attained, as it is not by enhancement suits that the *Thikadars* generally harass the Ryots. The paucity of enhancement suits in Behar clearly demonstrates this.

Section 99. & *the following Sections.*

Proceedings before the Collector are likely to be somewhat of the following nature: On the presentation of an application to the Collector, he (the Collector) will call for a *kaifieth sherista* (*i.e.*) for a report from his Sheristadar. On this *kaifieth*, he will issue notices, and in cases of contest, he will depute an Amin not ordinarily an officer of the fixed estab-

of the agreement. If the Ryots are sometimes evicted it is not for enhancing the rent that the landlord evicts them.

* One argument against a Metayer tenancy is that in this case, the Metayer's interest for 'improvement' is only half as much as that of a peasant proprietor, but if the interest of the *Bhowli* tenant could be thus measured, there is that of the *Bhowli* landlord which should also be taken into account, and in the interest of cultivation of Behar, it is a serious matter for consideration, whether the landlord's interest should or should not be diminished. Mr. Mill thus replies to the arguments for commutation. "If this transformation were effected, and no other change made in the Metayer's condition; if preserving all the other rights which usage ensures to him, he merely got rid of the landlord's claim to half the produce, paying in lieu of it a moderate fixed rent; he would be so far in a better position than at present, as the whole, instead of only half the fruits of any improvement he made, would now belong to himself; but even so, the benefit would not be without alloy; for a Metayer, though not himself a capitalist, has a capitalist for his partner, and has the use, in Italy at least, of a considerable capital, as is proved by the excellence of the farm buildings; and it is not probable that the landowners would any longer consent to peril their moveable property on the hazards of agricultural enterprise, when assured of a fixed money income without it." The remark would apply *verbatim*, if we were to substitute Italy for Behar, and the *excellence of the farm buildings*, for the excellence of the *gilandazi system*.

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lishment, to the Mafussil to ascertain all the points in dispute. Ten to one the Amin's report will be in favor of the party who would please him the most. The party dissatisfied will of course be entitled to bring his objections to the report, but the Collector whose onerous duties are already too much for him, will from the short hearing he will be able to give to the case, scarcely find anything to interfere with in such report. The above is the procedure, now adopted in cases coming before the Collector under Sec. 38 of Act VIII (B. C.).

Section 119. The *Malkucherry* is the Zemindar's place of collection of rent, and in as much as the affixing of a copy of notice at the *Malkucherry* will be held to be sufficient notice to the Ryots, a dishonest Zemindar may not be unlikely tempted to have this so done as not to give any notice to the Ryot at all.

In Behar, notice to the village Mahtonara or as he is also the *jaet* Ryot of the village, would be a better mode of service. In places where the Chowkidari Punchaet exists, service may also be advantageously made through the Punchaet.

Section 149. Who is to sue in cases where a Manager is appointed under Section 66? It does not appear that the Manager appointed under that section can bring suits referred to in this section, for under Sec. 67 his power is thus defined: "For the *purposes of management*, he shall have and shall be entitled to exercise the same powers which the co-parceners jointly might but for his management, have exercised."

Section 151. It would appear from the provisions of Sec. 27, that a 3 years' Ryot, when he has been served with a notice of increased damand of rent, *shall be* liable to pay such increased rent, if he continues to hold on. The present section provides for a suit by such Ryot, for the determination amongst other matters of the amount of annual rent payable by such Ryot. Is this power to sue for the determination of the annual rent payable, to be restricted to cases, where an increased demand has not been made?

Section 151. (*c*) Sections referred to in this clause are sections 32, 33 and 34. These sections however refer to Ryots holding land for less than 3 years and clearly appear to be misquotations.

Section 153. Can the Ryot relinquish the land under Sec. 31 and ask for compensation, without in the first instance establishing his right to abatement under this section? It would seem that he can, and in that case, he has an alternative remedy allowed to him for one and the same cause of action.

Section 210. Why should the term 'Khudkast' Ryot be retained in Sec. 210, and if the term is to be retained at all why should it not be properly defined? The discussions prove how vague the commonly accepted meaning of the term is. Again in Behar, the term does not mean resident and heriditary Ryots but Ryots who hold and cultivate the *Malik's Zerat* land.

Section 211. In cases of summary sales of *Putney Taluks* the balance after satisfying the Zemindar's claim for rent is to be sent to Government Treasury to meet claims of persons endamaged by sale. (Clause 3, Sec. 145). The under-tenure holders are free to sue for price of their interest or compensation (Clause 4, Sec. 145), and payments are to be made out of the surplus sale proceeds if plaintiff's claim is found equitable. (Clause 5 of the same section). Should not a similar measure of protection be given to inferior holders, or other persons endamaged by the sale of tenures and holdings in execution of decree, when such sale takes place free of all *incumbrances*?

In concluding this Note the Committee beg to add the following summary of the most important changes proposed by the draft Bill affecting the Zemindary interests. They do not see how it can at all be seriously said that the advantages offered to the Zemindars (which to them, appear to be *nil*) are a full equivalent of what is taken away from them.

Summary of the most important changes affecting the Zemindary interests.

(1.) Converting into tenure holder or under-tenure holder, ryots, to whom more than 100 standard bigahs have been demised otherwise than for a term or year by year and making the tenure and under-tenure of such tenure holder or under-tenure holder permanent and transferable, after 12 years

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holding. (Sec. 11, clauses *a* and *b*).

(2.) Limitting the landlord's right of enhancement in these cases first by allowing 30 per cent profit to the tenure holder under Sec. 9; whereas the profit allowed him by the Regulations was only 10 per cent; 2ndly by providing that the rent of a tenure holder once enhanced is not to be enhanced for a period of ten years next ensuing (Sec. 10); and thirdly allowing a minimum profit of 20 per cent to tenure holders when the lands are let out for reclamation. (Section 12).

(3.) Extending the right of occupancy in cases where it can not be acquired under the law as it prevails at present (Sec. 19, Explanations.)

(4.) Making occupancy rights saleable in execution of a decree for arrears of rent and transferable by sale, gift or devize. (Section 20).

(5.) Depriving the landlord's of the power of evicting occupancy ryots for non-payment of rent. Section 20 (*c*).

(6.) Limitting the ratio of produce payable to the landholder for lands, rent of which is payable in kind, to 50 per cent when the occupancy Ryot does not receive from his landlord seed or labour or other assistance. (Section 21).

(7.) Limitting the landlord's right of enhancement of rent in various ways (*a*) by providing that the enhanced rent shall not be more than double the former rent Section 23 (*b*); (*b*) by providing that the enhanced rent should not on any ground, exceed twenty-five per cent of the average annual value of the produce of the land Section 23 (*c*); (*c*) by providing for progressive enhancement Section 23 (*d*).

(8.) Creating a subordinate kind of right of occupancy, in favor of Ryots who have held only for 3 years with rights attached (Sections 26 to 31).

(9.) Giving ryots who have held for less than 3 years, the right to hold on the old rent unless there be a written agreement or unless he be served with a written notice to pay more on grounds to be stated in such notice Section 35, (1).

(10.) Limitting the landlord's right to demand higher rent, to amount which is not to be more than double the former rent limitting the landlord's right of re-entry in these cases.

(11.) Giving all ryots, irrespective of their status, the right to build brick-built dwelling houses and other houses and out-offices on the lands let out to them, without the landlord's permission. (Section 36).

(12.) Extending the right of occupancy to tenants who have held land used for building or other purpose for 12 years and more. (Section 41).

(13.) Making the interest of the person who has thus acquired a right of occupancy, heritable, transferable and devisable, and saleable in execution of decree. (Section 41 *b*).

(14.) Limitting the rent of such lands to a maximum of 5 per cent of the market value of such land. (Section 42).

(15.) Giving Ryots the power notwithstanding customs and contract to the contrary to cut down trees and appropriate them. Section 77 (*b*).

(16.) Not allowing the landlord to settle the land with other Ryots in cases of abandonment, until one year has expired from the date of such abandonment. Section 79 (4).

(17.) Allowing Ryots ejected from land, the right to the away-going crops, and to enter on land to remove them (Section 80).

(18.) Proposing to enact for Behar, that all Ryots are to have rights of occupancy in land held by them for 3 years, if they hold any land in the same estate for 12 years previously (Section 81).

(19.) Also that all Ryots are to have right of occupancy in land received in exchange from his landlord for land in which he had a right of occupancy (Section 82).

(20.) Limitting the landlord's proportion of produce in *Bhowli* tenures to 50 per cent (Section 83.)

(21.) Giving occupancy Ryots in Behar the right to commute rent payable in kind to an annual money rent (Section 86).

They have also added a separate note on the law of distraint, which it is proposed, to abolish, and also another note on the Permanent Settlement, showing how the rights of Zemindars and Ryots stood then and showing also that the proposed distribution of the produce of the soil is not at all justified by the power, reserved to Government under that Settlement. They have much misgiving, that though many valuable rights will be taken away from the landlord to be given to Ryots, the interest of the present race of tenantry will seriously suffer by the change, and holding this view, they beg to repeat what they said

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in the concluding paragraph of their last year's memorial.

'The relation of the landlord and tenant may not be so satisfactory as could be wished: but the remedy for this undesirable state of things is not to be found in fresh legislation, but in a better understanding by the parties themselves, of their respective interests. That interest is not at all as is ordinarily supposed antagonistic, and if things are only allowed to take their own course, this identity of interest will prevail, and a satisfactory relation between the parties established,—a desirable change which can only be retarded but not at all accelerated by legislation, the effect of which will be the unsettlement of defined right and with it, an increase of litigation.'

The changes against which the Association had then to protest were as nothing compared to the changes proposed by the present draft Rent Bill, and should it please the Government to introduce it in the Legislative Council, it is to be hoped that at least a sufficiently long time should be given to the public for a full discussion of its provisions. In submitting this note, the Committee beg to say, that the short time allowed them for the consideration of the Bill, accounts, to a certain extent for its scantiness.

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NOTES ON THE PERMANENT SETTLEMENT.

NOTES ON THE PERMANENT SETTLEMENT.

Whether before the date of the Permanent Settlement, the Zemindars were proprietors of the soil, or mere collectors of revenue, is a question which has now at best only some amount of historical interest. For all practical purposes, speculation into this question will perhaps be as barren of result as the determination of the question whether the ryots were not *serfs* in those good old days. The question was considered of very little moment even at the time of the Permanent Settlement by its noble author when he says " (61). The question that has been so much agitated in this country whether the Zemindars and Talukdars are the actual proprietors of the soil, or only officers of Government has always appeared to me to be very uninteresting to them" (Lord Cornwallis' minute, dated 3rd February 1790, p. 24.)

Possibly the character of a collector of Government revenue was ingrafted on the persons who were found to be the actual proprietors of land, and the functions of a Government officer and the right of a proprietor of land became so blended together that at the date of the Permanent Settlement there was some difficulty in determining what was the actual character of the then existing body, known as Zemindars. There is, however, really very good evidence to show that at least the Zemindars of Behar had a higher status than that of collector of land revenue. * Not only was their right then heritable and transferable like that of the Zemindars of lower Bengal but their *malikana* (proprietory) right used always to be admitted when the estates were farmed out, and they used to receive a certain percentage of the Government revenue realized from farmers as *malikana*, or sometimes they retained a tithe of the lands of an estate in lieu of such right. Sir John Shore speaking of the points of difference between the systems of Bengal and Behar says "Secondly. The proprietors of the soil in Behar universally claim and possess a right of *malikana*, which whenever they are dispossessed of the management of their lands they receive from the *aumil*, as well as from the tenants of *Jagheers* and proprietors of *Altamghas*. In Bengal no such custom has ever been formally established although there is some affinity between this and the allowance of *moshaira*."

It was in accordance with this view of rights of Zemindars in Behar that *malikana* allowance at the rate of ten per cent, on the Sudder *Jumma* of their lands was continued to them even on their finally refusing to engage for the *Jumma* required (Sec. XLIV Reg. VIII, 1793). The class of persons at present receiving such *malikana* allowance, is by no means small in this province. It was also in recognition of such proprietory right that a deduction equal to the amount of *malikana* over and above the *Khurcha* was made in the amount of assessment (Vide Sec. LXXXIII Reg. VIII of 1793). But the question is not what the Zemindars were previous to the Permanent Settlement; but what their status is under that Settlement. It is by reference to that Settlement which they have justly come to regard on the faith of our benign Government, whose faith has never been known to be broken, as the "constitutional charter" of their rights,

* The origin of most of the Rajes in Behar, is lost in the remotest antiquity. Their history clearly proves that their owners were at one time the lords paramount of the soil.

that such rights have to be determined. The Permanent Settlement which was solemnly proclaimed in March 1793 and which was declared 'unalterable by any persons whom the Court of Directors may hereafter appoint to the administration of their affairs in this country,' partakes of the nature of a solemn contract between the government on one side and the land-owner on the other. * It is somewhat in the nature of a perpetual contract lease (just such as afterwards sprung up under the name of *Putney* leases) under which, Government 'in consideration of justice, of good policy, and of the immediate interest of the East India Company,' made over as it were in perpetual lease, its own *quota* of *produce* of every *bigah of the land* for a permanent money rent which the persons with whom the settlement was made, bound themselves to discharge without perferring any claim or application for suspensions or remissions on account of drought, inundation or other calamity of season. (Vide section VII of Reg. I of 1793). The contract was, of course, suggested by the highest amount of good-will on the part of Government toward its subject races; it was nevertheless not a *nudum pactum*. We will proceed to the examination;—*first*, of the considerations of such contract; *secondly*, as to what passed to the zemindars under such contract; *thirdly*, as to the several stipulations entered into between the parties at the time of such contract. The considerations are thus stated by its noble author: "The attention of Government ought, therefore, to be directed to render the assessments under the lands as little burdensome as possible. This is to be accomplished only by fixing it. The proprietor will then have some inducement to improve his lands as his profits will increase in proportion to his exertions, he will gradually become better able to discharge the public revenue.

"90. In case of a foreign invasion it is a matter of the last importance, considering the means by which we keep possession of this country, that the proprietors of the lands should be attached to us from motives of interest. A landholder who is secured in the quite enjoyment of a profitable estate can have no motive for wishing for a change. On the contrary, if the rents of his lands are raised in proportion to their improvements, if he is liable to be dispossessed should he refuse to pay the increase required of him, or if threatened with imprisonment or confiscation of his property on account of balances due to Government upon an assessment which his lands are unequal to pay, he will readily listen to any offers which are likely to bring about a change, that cannot place him in a worse situation, but which holds out to him hopes of a better.

"Until the assessment on the lands is fixed, the constitution of our internal government in this country will never take that form which alone can lead to the establishment of good laws and ensure a due administration of them; for, while assessment is liable to frequent variation, a great portion of the time and attention of the Supreme Board and the unmitigated application of the Company's Servants of the first abilities and the most established integrity, will be required to prevent the landholders being plundered and the revenues of Government diminished at every new settlement, and powers and functions which ought to be lodged in different hands must continue, as at present, vested in the same persons and whilst they remained so united, we cannot expect that the laws which may be enacted for the protection of the rights and property of the landholders and cutivators of the soil, will ever be duly enforced.

"We have by a train of the most fortunate events obtained the dominion of one of the most fertile countries on the face of the globe with a population of mild and industrious inhabitants, perhaps equal to, if not exceeding in number that of all the other British possessions put together.

"Its real value to Britain depends upon the continuance of its ability to furnish a large annual investment, to Europe, to give considerable assistance to the treasury at Calcutta, and to supply the pressing and

* The settlement in 1789 was made under the denomination of *Karar Jummadih Sala* (Vide Resolutions on the Bengal settlement No 54 p 40. Papers relating to the Permanent Settlement.) The word *Karar* is the vernacular translation of the word 'contract.' The deeds that were exchanged were called *Pottahs* or *Amuldustuks* and *Kabooliats*. The consent of the Zemindar and their qualification to give such consent were held essential to the validity of the settlement. (Vide Sections XXI and XXVI of Reg. VIII of 1793.)

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extensive wants of the other presidencies.

"The consequences of the heavy drains of wealth from the above causes, with the addition of that which has been occasioned by the remittance of the private fortunes, have been for many years past, and are now severely felt by the great diminution of the current specie, and by the languor which has thereby been thrown upon the cultivation and the general commerce of the country.

"A very material alteration in the principles of our system of management has therefore become indispensably necessary in order to restore this country to a state of prosperity, and to enable it to continue to be a solid support to the British interests and power in this part of the world.

"We can only accomplish this desirable object by devising measures to rouse and increase industry of the inhabitants, and it would be in vain to hope that any means but those of holding forth prospects of private advantages to themselves, could possibly succeed to animate them to exertion."

These considerations may be briefly summed up thus:—

Firstly;—the development of the agricultural resources of the country.

Secondly;—security and permanency of the Government revenue.

Thirdly;—the obtaining the attachment of landholders to Government by securing to them the quite possession of a profitable estate.

To these may be added;

Fourthly;—the acquisition of a further security for the realisation of Government revenue demands in the property, moveable and immoveable of the Zemindars other than that for which such revenue would be payable. (Reg. XIV, of 1793, Sec. XLIV.)

Fifthly;—the amalgamation in Behar, of *malikana* lands, and in Bengal and in Orrissa, *nunkar*, *khamar neej-jote* and other private lands of the proprietors with the *malgoozary* lands; fixing the assessment on both these classes of lands and making them jointly liable to sale for the due discharge of the stipulated Government revenue. (Reg. VIII of 1793, Secs. XXXVIII and XXXIX.)

The sufficiency of these considerations to support a contract appears undisputed. *

We will next see what passed to the Zemindars under the contract. Previous to the date of the settlement, the produce of the land appears to have been shared by the State, the zemindar, and actual cultivators. In some cases a middleman between the zemindar and the actual cultivators intervened. Of course, it was not a portion of the actual produce that passed to the State; but though the Government claim was used to be commuted to money, at the time of each settlement it was always this share that was claimed. (Vide preambles to Regs. XIX and. XLIV of 1793). § What was this share it is not now easy to determine? We find from the Fifth Report page 16, that this share was something like three-fifths of the actual produce. The following quotations will show this:—

"In the extensive plains of India a large proportion, estimated in the Company's provinces at one-third by Lord Cornwallis, at one-half by others and by some at two-thirds of lands capable of cultivation, lies waste and probably was never otherwise. It became therefore, of importance to native Governments, whose principal financial resource was the land revenue to provide that, as the population and cultivation should increase, the State might derive its proportion of advantages resulting from

* We do not lay any stress upon the valuable consideration which has since passed on the occasion of sales of Zemindaries; for it may be urged that in such considerations Government did not share; yet it has to be remembered that it was on the faith of the original contract, the meaning of which has not hitherto been otherwise interpreted, many people have invested their all in the purchases of estates at public and private sales, other kinds of private contracts have been entered into and valuable considerations passed. There are cases also in which Permanent Settlement of *Khas mahal* estates has since been made by Government for the highest amount of premium bid at auction sales.

§ "By the ancient law of the country, the ruling power is entitled to a certain proportion of the produce of every bigah of land demandable in money or kind, according to local custom, unless it transfers its right thereto for a term or in perpetuity, or limits the public demand upon the whole of the lands belonging to an individual, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public, whilst he continues to discharge the latter." Preamble Reg. XIX of 1793. To the same effect Preamble Reg. XLIV of 1793.

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this progressive augmentation. * * * This rule is traceable as a general principle through every part of the Empire which has yet come under the British dominion, and undoubtedly had its origin in times anterior to the entry of the Mahomedans into India. By this rule the produce of the land, whether taken in kind or estimated in money, was understood to be shared in distinct proportions between the cultivators and the Government. The shares varied when the land was recently cleared and required extraordinary labour, but when it was fully settled and productive, the cultivator had about two-fifths and the Government, the remainder."

Under the regulations fixing the permanent assessments, this proportion was taken to be represented by ten-elevenths of the rent-roll of an estate (Reg. I, 1793 Sec. VII and Reg. II, 1793 preamble), and the remainder represented the share of the landholder. It was thus that this State share of the actual produce which when the assessment was not fixed and permanent, varied with every settlement, was commuted to money in 1793 on a valuation of the produce of all the lands then in cultivation and with due regard to the prospective increase from the produce of the lands then lying waste and uncultivated; and such commuted money value declared fixed and unalterable for ever. The Government transferred to the persons, described as actual proprietors under the Regulations, the right to collect and appropriate to themselves the State share of the actual out-turn of every bigah of land which were then in cultivation and which would come under cultivation at any future time in perpetuity in consideration of their agreeing to pay the *Jumma* (the Government revenue,) demanded in 1793 for all time to come without preferring any claim for remissions on the ground of drought, inundation or other calamity of the season. It is useless to enquire now how hard the *Jumma* pressed then, and how many actual proprietors refused to agree to this *Jumma*. As for those that agreed to this assessment the Permanent Settlement was by no means, an immediate boon. The histories of Zemindaries will show that but few of them are now in the hands of the descendants of those with whom the original settlement was made. Several Zemindaries had in fact to be sold during the first few years after the settlement. (Vide preamble Reg. VII of 1799). To quote Mr. Mill, "the selling of the Zemindaries immediately began and proceeded with a rapid pace. In the year 1796, the land advertised for sale comprehended a rent-roll of 28, 70,001 sicca rupees, which, according to the total assessment, was nearly one-tenth of the whole of Bengal, Behar and Orrissa in a single year. By the progress of this operation, the whole class of the ancient Zemindars instead of being erected into an aristocracy was speedily destroyed."

But whatever the immediate effect of the Permanent Settlement was, and whatever misery it might have brought upon the persons who in those days had to agree to Government assessment there can be no question that it is now a great blessing both to their descendants and to others to whom their zemindaries might have passed, and that it is considered a great blessing to the country by all its real well-wishers. What the Zemindars obtained then and what they are in possession of now, under the Permanent Settlement may be thus summed up.

1st. An assignment of the State share of the produce of every bigah of land for a fixed money assessment in perpetuity.

2nd. A recognition of a proprietory right to this assigned share, subject to the payment of the fixed assessment, and to their own share of the produce, in cases where the proprietory right extended only to such share of the produce, or to money rent in lieu.

3rd. A full recognition of their right to let the lands comprised in their zemindaries to whom-so-ever they pleased and in whatever manner they pleased (Vide Sec. 52 of Reg. VIII of 1793), excepting lands which were comprised in any *Mukurrary* (under Sec. 49 of Reg. VIII of 1793), or dependent *Taluks* under Sec. 51 of the said Regulation and also excepting lands that were in occupation of *Khudkast* Ryots (Sec. 60, clause 2). The last exception, however, did not apply to Behar.

We have here the fullest proprietory right recognized. The Zemindar was to do what he would think best to do with his own: fullest freedom was to be allowed to him to let out his lands to any person on whatever terms he pleased, for how long he pleased and for what rents he pleased. The only fetter to his freedom in these respects was

to be the natural fetter of supply and demand. There were serious apprehensions entertained for sometime after the Permanent Settlement, that the Zemindars might for their present benefit do something that would seriously impair the interests of the Government Revenue and the earlier regulations were directed to prevent them from doing so. If Government then, in its anxiety for the protection of the Government Revenue, thought fit to intervene between the Zemindar and his freedom of action, it was to prevent him from injuring his interest and that of Government by conceding too much to under-tenants under the then state of the rule of supply and demand (Vide Preamble, Reg. XLIV of 1793). *

If Government then thought fit to interpose between the Zemindar and the Ryot, it was to enable the Zemindar to enforce his contracts with his Ryot, and to afford him increased facilities for the realization of his rents, on which depended in a great measure the punctual payment of Government Revenue (Vide Preamble, Reg. VII of 1799). *

This was the state of the law when Government thought fit to discharge what it conceived, to use the words of Sir Frederick Halliday in his minute dated the 27th November 1858, "a heavy obligation towards the Ryots, long unfulfilled by our legislation by enacting Act X of 1859." Two successive Chief Justices of the Highest Court of judicature of this country condemned the new right of occupancy given under that law to Ryots as 'an invasion of the Zemindar's rights' and as inconsistent with such rights (Vide remarks of Sir Barnes Peacock and Sir Richard Garth quoted at p.10 of these Notes.

There are some, however, who are not content to have these learned judges as their guides, but they appear to think

* Preamble to Reg. XLIV of 1793 declares "the public demand upon the estates of the proprietors of lands, having been declared fixed for ever, it is to be apprehended that many proprietors, either from improvidence, ignorance, or with a view to raise money, or from other causes or motives, may be induced to dispose of dependent *Toluks* to be held at a reduced *Jumma*; or fix the *Jumma* of such dependent *Taluks* as now exist in their respective estates at an under-rate; or let lands in farm or grant *Pottahs* for the cultivation of land at a reduced rent for a long time, or in perpetuity. Such engagements if held valid, would leave it in the power of weak, improvident, or ill-disposed proprietors to render their property of little or no value to their heirs; promote vice and injustice; occasion a permanent diminution of the resources of Government arising from the lands, in the event of the rent or revenue, reserved by such proprietors, being insufficient for the discharge of the amount of the public demand upon these estates; be an abuse of the great and lasting benefit which has been conferred upon the landholders by the possession of their lands being secured to them in perpetuity at a fixed assessment; and moreover be repugnant to the ancient and established usages of the country according to which the dues of Government from the lands (which consist of a certain proportion of the *annual produce of every bigah* of land, demandable according to the local custom in money or kind, unless Government has transferred its rights to such proportion to individuals for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land leaving him to appropriate to his own use the difference between the value of such proportion of the produce, and the sum payable to the public, so long as he continues to discharge the latter) are unalienable without its express sanction." It is noteworthy that the mischief which the Government had then to guard against was not arbitrary enhancement of rent but its improvident abatement.

* Preamble, Reg. VII of 1799. "The powers which the landholders and farmers of land paying revenue to Government are at present allowed to exercise for enforcing payment of the rents due to them from their under-tenants, having in some cases been found insufficient, particularly when the crop, not being in the immediate possession of the under-tenant in arrears, cannot be distrained and sold under the provisions contained in Reg. XVII of 1793 and XXXV of 1795, a considerable delay having also of late occurred in the payment of the public revenue due from many of the landholders, which though ascribable in some instances to the cause above mentioned, can in others be imputed only to a want of good faith on the part of certain of the Zemindars and other landholders who, taking advantage of the delay with which the process for disposing of their lands is unavoidably attended, have withheld payment of their instalments until the day appointed for the sale, and in many instances, there is reason to believe, have bought in their lands, when sold, in fictitious names, or in the names of irresponsible dependants; moreover, the frequent and successive sales of land, within the current year having been found productive of material ill-consequences, as well towards the land proprietors and under-tenants, as in their effect on the public interest in the fixed assessment of the land revenue. The Vice-President in Council, with a view to obviate the above injurious consequences here-after and to establish a more certain and easy process for enabling landholders and farmers of land to realise their rents, and the officers of Government revenue without having recourse to sales of land till the close of the year, has enacted," &c.

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that a great injustice was done to the Ryots by Act X of 1859, in as much as it, for the first time, gave a legislative sanction to enhancement of rent and restricting as it did the right of occupancy to 12 years' holding, provided for the ejectment of other than occupant Ryots. We will examine in the next part of these notes what truth there is in this statement.

In the next place we turn to the consideration of the stipulations entered into between the parties. There were several important covenants entered into this contract; some under which Government reserved to itself certain powers, the Zemindars covenanting not to demur to the due discharge of the fixed assessment when such reserved powers were exercised; some under which Government guaranteed a good title to the Zemindar for all time to come. For our present purpose we will refer only to three of these.

1st. Government guaranteed that the order, fixing the amount of the assessment is irrevocable, and not liable to alteration by any persons whom the Court of Directors may here-after appoint to the administration of their affairs in this country, and exhorted the zemindars to exert themselves in the cultivation of their lands, under the certainty that they would enjoy exclusively the fruits of their own good management (Art. VI Proclamation and Sec. VII of Reg. I of 1793.)

2nd. By Preamble of Regulation II of 1793, passed only two months after the issue of the Proclamation for the Permanent Settlement and enacted with other regulations on the same date as Regulation I of 1793, it was declared that (we quote only the material portions) "all questions between Government and the landholders respecting the assessment and collection of the public revenue, and disputed claims between the latter and their Ryots were to be tried by courts of civil judicature, and no power is to exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected"

3rd. Government reserved to itself the power to enact laws and regulations for the *protection and welfare* of dependent Talukdars and Ryots and the zemindars agreed not to object on this account, to the due discharge of Government Revenue. (Article VI Proclamation and Sec. VIII of Reg. I of 1793).

These covenants, as coming together cannot be inconsistent with each other and they have to be so construed as not to affect the spirit of the contract.

It is the meaning of the third covenant that has, however, given rise to much discussion.

The words "protection and welfare" are indeed vague: but the meaning is not difficult to ascertain.

It could never have been intended that the reservation of this power would carry with it the power to grant, by enactments, such rights to these classes of men, which did not exist at the time of the Settlement and the conferring of which would be only possible by the confiscation of a part of zemindary rights; for if that was so, the Permanent Settlement would mean nothing. Suppose under the reservation the Government was to make a Ryotary settlement of the lands of these provinces, can it be said that Government would be justified in doing so? If now instead of proceeding so far, Government was to proceed half way in that direction, how can it be said that Government action is justified or justifiable. It is not alone by increasing the amount of the fixed assessment that the Permanent Settlement can be broken, but by a variety of other means as well. To take a concrete example: Suppose the sum of zemindary rights is 16 annas; Government was to take 4 annas of these rights to give to A. B. & C; would not this be an infringement of the Permanent Settlement? As it was never intended at the date of the Permanent Settlement that the amount of public revenue should be ever enhanced, it was never contemplated at that date that Government should do any thing that would in any way deteriorate the value of zemindar's property. This is clear from the spirit of the Settlement itself as also from the spirit and words of the first two covenants noted above. (Preamble of Reg II of 1793 and Reg. I of 1793 Sec. VII and VIII).

The history of the reservation to a certain extent explains its meaning. Sir John Shore thought that some interposition between the zemindars and their Ryots seemed to him absolutely necessary; and on that ground alone, would not advise a Permanent Settlement; for in his opinion, if the zemindars were declared proprietors, they would resent

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any interference of Government for the Ryots' protection as an infringement of the rights of landlords to do as they pleased with their own. (Vide Mr. Shore's minute dated 8th December 1789).

The Governor-General replies :—

"Mr. Shore observes that this interference is inconsistent with proprietary right, and that it is an encroachment upon it to prohibit a landlord from imposing taxes on his tenant, for it is saying to him that he shall not raise the rents of his estate, and that, if the land is the zemindar's, it will only be partially his property, whilst we prescribe the quantum which he is to collect, or the mode by which the adjustment is to take place between the parties concerned.

"If Mr. Shore means that, after having declared the zemindar, proprietor of the soil, in order to be consistent, we have no right to prevent him imposing new *abwabs* or *taxes* on the lands in cultivation, I must differ from him in opinion, unless we suppose the ryots to be the absolute slaves of the zemindars. Every bigah of land possessed by them must have been cultivated under an *express or implied agreement* that a certain sum should be paid for each bigah of produce and no more. Every *abwab* or tax imposed by the zemindar over and above that sum is not only a breach of that agreement, but a direct violation of the established laws of the country. The cultivator therefore has, in such a case, an undoubted right to apply to Government for the protection of his property, and Government is at all times bound to afford him redress. I do not hesitate therefore to give it as my opinion that the zemindars neither now nor ever could possess a right to impose *taxes* or *abwabs* upon the ryots; and if, from the confusion which prevailed towards the close of the Mogul Government, or neglect, or want of information, since we have had possession of the country, new *abwabs* have been imposed by the zemindars or farmers, that Government has an undoubted right to abolish such as are oppressive and have never been confirmed by a competent authority, and to establish such regulations as may prevent the practice of *like abuses* in future.

"Neither is the privilege which the ryots in *many parts of Bengal* enjoy, of holding possession of the spots of land which they cultivate so long as they pay the revenue assessed upon them, by any means incompatible with the proprietory rights of the zemindars. Who-ever cultivates the land, the zemindar can receive no more than the established rent which, in most places, is fully equal to what the cultivator can afford to pay. To permit him to dispossess one cultivator for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit.

"The practice that prevailed under the Mogul Government of uniting many districts into one zemindary, and thereby subjecting a large body of people to the control of one principal zemindar, rendered some restriction of this nature absolutely necessary. The zemindar, however, may sell the land, and the cultivators must pay the rent to the purchaser."

It follows that Government interference was thought necessary; 1st, to prevent zemindars to impose new *abwabs* on the lands over and above the sum payable under the *express or implied agreement* under which the Ryot cultivated, (observe not to restrict his freedom as to the matter of such agreement;) 2ndly, to prevent him to dispossess such Ryots who in *many parts of Bengal* had the privilege of holding possession of the spots of land which they cultivated so long as they paid the revenue assessed upon them and not to restrict his power of eviction in *other cases*.

This was the origin of the reservation made in Sec. VIII of Reg. I of 1793, and the measures that were immediately taken by virtue of such power reserved. The Court of Directors, in sanctioning the proposal of Lord Cornwallis, observes; "But as so great a change in habits and situation can only be gradual, the interference of Government may, for a considerable period, be necessary to prevent the landholders from making use of their own permanent position for the purpose of *exaction and oppression*." The history of the reservation therefore clearly shows that the words "*protection and welfare*" meant only interference for the purpose of preventing "*exaction and oppression*."

Some would, however, go so far as to think that under it, Government is empowered to enact laws for the welfare of the Ryots, *i. e.* for giving the Ryots better rights than they do enjoy under the present law, without any

regard to the rights guaranteed to the zemindars. They say that it is clear and undeniable that even without this reservation, one of the contracting parties, being the Ruling Power itself, could interpose between the zemindar and his tenantry to protect the Ryots from oppression and from proceedings unwarranted by law; and that if the reservation means only mere protection from oppressions it would be quite meaningless; but it has to be borne in mind, that what is oppression now was not oppression then. The zemindars, as stewards of Government Revenue, could then exercise a sort of legalised tyranny over their ryots. Not only could they distrain the Ryots' crops cattle and moveables for the realization of their rent; but they were not even bound to respect the privacy of the Ryots' *Zenana*. They could imprison their ryots and inflict on them corporeal punishment, until they were forbidden to do so, by Reg. XVII of 1793. They could impose any number of *mahtots* and *abwabs* on their ryots, until they were prohibitted to do so by Sec. 55 of Reg. VIII of 1793. They could interfere in matters coming within the cognizance of civil and criminal Courts until they were prohibitted from doing so by Section 66 of the said Regulation. They could demand the rents of their absconded ryots from those that remained, until they were forbidden to do so by section 63; they were deprived of their police jurisdiction under clause 4, Section 67—and these were the measures which were taken immediately after the date of the Settlement for the welfare of ryots under the power reserved. The nature of these measures show again what was meant by the reservation. Doubtless it also meant the protection of such existing rights as some of the dependent talukdars and ryots had, and which were expressly recognized by the Regulations. We will in the next place examine what were these existing rights which were thus recognized. These are; 1st, the rights of dependent Talukdars; 2nd, those of ryots. As for dependent Talukdars, we find, *first* that those whose rents had not changed for the last 12 years before the settlement, or with whom the Zemindar had made an agreement not to lay any increase, were entitled to hold at fixed *mokarrary* rents (Sec. 49 of Reg. VIII of 1793); *secondly*, others who, though not entitled to hold at fixed rates of rents could have their rents raised only under certain special circumstances (Sec. 51 of Reg. VIII of 1793).

Excepting the lands held by these classes of men, the Zemindar was entitled to let out the rest of the lands, comprised in his estate to whomsoever he pleased and in whatever manner he pleased, with one reservation that in Bengal he was not entitled to cancel the *pottahs* of *Khudkast* Ryots. The reservation, however, was not applicable to Behar. (Vide Sec. 60 of Reg. VIII of 1793). Thus we find an important difference between the cases of Ryoti rights as then existed in Bengal, and as it existed in Behar. In Behar no Ryoti rights were recognized; the Zemindar was entitled to let out his lands excepting those comprised in dependent Taluks that existed in his estates, to whomsoever he pleased and in whatever manner he pleased. The reason why the provision in favor of *Khudkast* Ryot was not made applicable to Behar is clear enough. There was no description of ryots here known as *Khudkast* Ryots with the meaning which obtained in Bengal. *Khudkast* lands here, properly mean, as its etymology would show, those lands which the proprietor cultivates himself. The term means the same as the term *neej-jote* in Bengal, and a *Khudkast* ryot would properly mean here a Ryot who cultivates the *malik's neej-jote* lands.

In Bengal, the Zemindars were to see that the *pottahs* of no *Khudkast* Ryots, that is, of no *resident heriditary* cultivators, were cancelled. It is observable that this strong point of difference between the cases of Ryoti rights in Behar and Bengal has not been noticed in the discussions on the subject. It is clear from the fact of this difference, that all those learned arguments regarding the rights of *Khudkast* ryots which have been so strongly pressed, are not applicable to Behar, however good they may be for Bengal. But even for Bengal it is clear to us: *first*, that the provision in favor of certain Ryots known as *Khudkast* Ryots as contained in Sec. 60, was only *provisional* in its character, that is to say, it was to last only till a permanent arrangement for the protection of these Ryots could be made. It has to be observed that Reg. VIII of 1793, is a mere transcript of certain rules framed at the time of the Decenial

Settlements. The preamble states: "the original rules for forming a decennial settlement of the revenue to be paid from the lands in Bengal, Behar and Orrissa, passed for those provisions, respectively on the 18th September 1789, 5th November 1789, and 10th February 1790, having undergone considerable alterations during the progress of the arrangement; an amended Code of Rules, including the original Rules and the subsequent alterations, was passed on the 23rd November 1791. That code is now re-enacted with modifications and amendments, adapted to the principles of Regulations II and III of 1793, by which the judicial powers here-to-fore in vested the Collectors of the revenue as superintendents of the late courts of *Maal Audalat*, or revenue courts are transferred to the courts of *Dewany Audalat* or courts of civil judicature established in the several *Zillahs* and cities for the trial of all civil suits in the first instance." The section that follows marked as Sec. 2 runs thus:—"A new settlement of the land revenue shall be concluded for a period of *ten years* to commence with the Fussily, Willayati and Bengal year 1197 for Behar, Orrissa and Bengal respectively." In some respects it is a mere record of what took place in 1789, though some of its provisions which were laid down as rule for the guidance of Zemindars after the date of the Decenial Settlement, were retained and enacted as law after the date of the Permanent Settlement.

Now the provisions of clause 2 Sec. LX of Reg. VIII of 1793, regarding the rights of *Khudkast* ryots is a transcript of a portion of Rule 27 of the Resolutions on the Bengal settlement No. 54, printed at page 45 of the Papers, relating to the Permanent Settlement. The wording of the portion of the rule referred to, runs thus:—"That no zemindar, farmer, or person acting under their authority shall be allowed to cancel the *pottahs* of the *Khudkast* ryots except upon proof that they have been obtained by collusion, or that the rents paid by them, within the last three years, have been reduced below the rents of *nirikbundi* of the *Perganah*, or that they have obtained collusive deductions, or upon a general measurement of the *Perganah* for the purpose of equalising and collecting the assesments." On comparison it will be found that this is the very wording of clause 2, Sec. LX of Reg. VIII of 1793s only the words, "the rule contained in this clause is not to be considered applicable to Behar" which are not in the original rules; being the *Resolution on the Bengal settlement only*, are added to the section of the Regulation which is applicable to Bengal and Behar alike. The Rule 27 of the Resolution has a short heading which is worded thus; "*provisional rules for the security of the ryots*," to distinguish it from Rule 28, which is headed "Permanent plan for the ease and security of the ryots" which corresponds with Sec. 61, under which a certain time is allowed to proprietors of lands &c. to prepare and deliver *pottahs* to ryots. In this *permanent plan for the ease and security of the ryots*, we have not a word regarding the *Khudkast* ryots. Evidently the Rule 27 was to be in force only, till the permanent arrangements were not effected, and as at the date when the Rules were enacted in Regulation VIII of 1793, the *pottahs* had not been all prepared and delivered, it was necessary to retain the portion of the Rule 27 regarding *Khudkast* ryots in the Regulation. We will afterwards see what was this "*permanent plan for the ease and security of ryots.*"

Secondly;—That the Rule regarding *Khudkast* ryots was applicable only to those who came under that denomination at the date of the Permanent Settlement.

Clause 2 Sec. 60, refers to certain ryots who happened to have a superior right to others and to be then known under a particular name. The wording clearly points to this; it refers to 3 years antecedent to the date when the rules were framed, just as section 49 refers to 12 years antecedent to that time with regard to Talukdars.

If it was intended to recognize the right of those who under the interpretation of the word *Khudkast*, would come at any future time to be known as such, we might at least have expected a definition of the term *Khudkast*, or a certain substantive law laid down in favor of a class.

Thirdly;—That even if it was intended by the provision of clause 2 section 60 Reg. VIII of 1793 to recognize a customary right in a class of Ryots who would be *Khudkast* under some interpretation of the term, this right was not recognized at the date when the enactment of a law of landlord and tenant

was proposed in 1858. From the papers prepared at that date nothing appears to be so clear as this.

Fourthly;—That as the facts then stood, the right conferred on ryots by section 6 of Act X of 1859, was a great boon to these Ryots and an invasion of the Zemindary right as guaranteed under the Permanent Settlement.

In the opinion of some, however, every resident Ryot in Bengal had a right of occupancy in his *Jote*; and *every* cultivator who settled permanently to cultivate as a member of the village community became *ipso facto* a resident Ryot. They hold that recognition as a resident Ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to the established local rates and not at any higher rates. They believe that it was not the intention of the legislature in 1793 to alter this, or to confer on the Zemindars a power of enhancing either individual Ryot's rates or general local rates at pleasure, and they consider it almost certain that ordinary landlords had originally under the regulations no legal power of raising the customary prevailing rates at all. *Per contra*, they admit that, as a fact, ordinary landlords, profitting by special rules made in favor of auction-purchasers and devised to protect the Government Revenue, have persistently and with the sanction of the courts (though until lately not with that of the legislature) enhanced rents arbitrarily, and that this right cannot now equitably be denied to them. But, on the other hand they hold that the Ryot's position cannot equitably be altogether destroyed. This is, we believe, the extreme view of the Ryot's position, and the arguments may be summed up thus.

Firstly;—The existence of ancient customs of the nature of common law under which every *resident Ryot* in Bengal had a right of occupancy in his *Jote*; and every cultivator who settled permanently to cultivate as a member of the village community became *ipso facto* a resident Ryot; and that recognition as a resident Ryot rendered such a settler liable to pay his share of the revenue assessed on his village according to the established local rates, and not at any higher rates.

Secondly;—That the Permanent Settlement did not alter this; and that under the regulations, a landlord had not the power to enhance rent.

Thirdly;—That as a matter of fact previous to the enactment of Act X of 1859, the landlords taking advantage of rules framed for the benefit of auction-purchasers and for the protection of public revenue did as a matter of fact enhance rent through courts.

Fourthly;—That when on the one hand this right cannot now equitably be denied to them, on the other hand, the Ryot's position cannot be equitably destroyed.

We will premise, that according to all rules of evidence, historical or legal, and according to those first principles on which these rules are based, the *onus* of proving the affirmative of the first of these propositions is on those who advance it, as it is at variance with laws and usages existing at the present day and also at variance with the expressed opinions of the learned judges of our Highest Courts of judicature. We will examine the proofs which they bring forward to support their position.

As to the first of these points, the evidence adduced is the use of the term *Khudkast Ryot* in the Regulations and it is from the meaning of the term *Khudkast Ryot*—the meaning of which the Commissioners have not been able to fix at all, (Vide Sec. 212 of the Draft Rent Bill where the term is yet used and no definition given in the preliminary Chapter of definitions) that this customary common law is sought to be educed. The earliest mention of these *Khudkast* Ryots is we suppose in clause 2 section 60 of Reg. VIII of 1793; and as this section is not applicable to Behar, it follows perforce, from the above reasoning that at least such customary common law only deducible from the use of the term *Khudkast* did not exist in this province. However, the question even where the term was used would be :—1st. What is permanently settling to cultivate as a member of the village community (*i.e.*) after what length of time it is to be said that a cultivator thus settles himself. 2ndly. What is recognition as a resident Ryot? When, how and by whom? These questions are all left unanswered. The ancient village community, as Mr. Elphinstone describes it, traces of which, however, are now neither discernible in Bengal nor in Behar consisted of the village landholders, tenants, permanent and temporary, and others who do not concern our present purpose. A

stranger could only come in as a landholder by purchase; and as in those good old days, Ryots whether permanent or temporary, could not sell their holding, a man could come in as a tenant only with the consent of the landholders. Now if in process of time, he would build a residence in the village where he cultivated, retain his holding during his life, and transmit the same to his children, the tenancy which would be thus transmitted to his descendants, would be a permanent tenancy in a village community. (Vide Elphinstone's India. p 73). This is why *Khudkast* Ryots are sometimes translated in the Regulations as *resident hereditary Ryots.* It is not thus the first settler who came to have such right; but his descendants to whom he transmitted such right; and what was the nature of this right; some claim of occupancy so long as the *Khudkast* Ryot paid rent. This might or might not have been understood in 1793, but shortly after came to be the law with regard to the eviction of these Ryots (Vide Sec. 15 clause 7 of Reg. VII of 1799). It was extremely doubtful whether they were entitled to retain at any privileged rate of rent. (Vide Elphinstone. p. 74).

The authority for this opinion is given in a note from which we learn that in 1818, a call was made by the Bengal Government on the Collectors of all the provinces not under the Permanent Settlement, for information respecting the rights of the Permanent ryots. Of fourteen collectors, eleven considered the landholder to be entitled to raise his rent at pleasure, and to oust his tenant whenever he could get better terms elsewhere; two Collectors (those of Etawa and Seharunpur seem to have thought that the landlord's rent should not be raised unless there was an increase in the demand of Government: the Collector of Bundelcund alone declared the *Khudkast* ryot's right to be as good as his of whom he holds. The members of the Revenue Commission, in forwarding these reports, gave their opinion that landholders conceive themselves to possess the power of ousting their tenants, although from the demand for ryots it is not frequently exercised. The government at that time doubted the correctness of these opinions, and called for further information; which, although it threw much light on the question, did not materially alter the above conclusion.

Mr. Ross, a judge of the chief court, likewise, in a very judicious minute of 22nd March, 1827, states that a fixed rate never was claimed by mere ryots, whether resident or non-resident, in the upper provinces; inquires when such a fixed rent was in force; and whether it was intended to remain fixed, however the value of the land might alter? and concludes as follows:—" As to the custom of the country, it has always been opposed to such a privilege, it being notorious that the zemindars and other superior landholders have at all times been in the practice of extorting from their ryots as much as the latter can afford to pay." Elphinstone's History of India pp 273 and 274.

It is then said that this ancient customary law of India is to be traced from the Institutes of Manu and a text is relied on to the effect that "land is the property of him who cuts away the wood" or in the words of the Commentator "who tilled and cleared it." But in these Institutes, the king is said "to be the lords paramount of the soil" and it is also laid down "that occupiers of land are to be responsible to the king if they failed to sow it." Then it is said that such customs have been recognized by Reg. VII of 1799, where all ryots are said to be included in the term "Ryots with rights of occupancy" as used in Sec. 15 and still later in a decision of Sudder Dewany Adaulat of 1855. Turning to the regulation we find that only a particular class (i e) the class of *Khudkast* Ryots mentioned in the exception to section 60, is meant, and referring to the decision of the Sudder Dewany Adaulat, we find that the question involved in that case was whether a Ryot's holding was transferable; and the Judge's held that it was not, in as much as the Ryot had no *equivalent to offer.*

If then any such customary right exists, it may well be left to be determined by the Civil Courts. All that is wanted is a clause in the Rent Law saving such customs and these customs would take care of themselves. The Indians are peculiarly tenacious of their custom and with them customs do but in rare cases, die. *

* As a strong proof of the vitality of customary rights in Behar, we may set the example of *Goonast* tenure in Shahabad; which though not

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Secondly ;—The Permanent Settlement did not certainly affect the position of the Ryots ; but if we are to believe contemporary records, this position was not much better than that of *serfs*. We have shown how the zemindars as stewards of Government Revenue exercised over them a sort of legalized tyranny. It was one of the great objects of the Permanent Settlement to protect them from this; and this protection could be only extended, without seriously affecting the interest of the Public Revenue at that time, by keeping the other rights of the Zemindars *intact*,—rights, the exercise of which would not be necessarily oppressive. We will examine the law as was laid down with respect to eviction and enhancement.

We have shown how the Zemindar had the power given to him to let his lands to whomsoever he pleased and in whatever manner he pleased under certain restrictions The restrictions do not refer to the amount of rent. It refers merely to illegal cesses and *Abwabs*. The Regulations certainly speak of *Perganah* rates. One of the earliest mention of the *Perganah* rate, occurs in Regulation XLIV of 1793. From the Preamble and provisions of that Regulation we find:

1st. That at the renewal of a *Pottah* the rate of rents was left to be determined by the contracting parties. The preamble to this regulation speaks of a "discretionary power" being vested in Zemindars to fix the amount of rent which they could demand from Talukdars and Ryots, and section 2 leaves them the power to fix their own terms.

2nd. The existence of certain usages or *Perganah* rates at which, not that *the ryots were entitled to demand Pottah*, but the proprietors, being auction-purchasers at a revenue sale, were entitled to demand rents from the Ryots, whatever might have been their engagements with the late owner.

3rd. That the mischief which the Government had then to guard against was not arbitrary enhancement of rent, but improvident fixity and abatement of such rent.

4th. Government declared that according to established usage it was entitled to get as its dues a certain proportion of the annual produce of every bigah of land, either in money or kind, and that such right was inalienable without its express sanction.

5th. That on the public assessment being fixed, the proprietor of land was entitled to appropriate to his own use the difference between the value of such proportion of the produce, and the sum payable to the public.

The *Perganah* rate thus evidently is the certain proportion of the annual produce of every bigah of land, demandable according to the local custom, either in money or kind, which, according to the ancient and established usages of the country, was the share of the ruling power (it certainly cannot be less) and which share the parties, with whom a Permanent Settlement of the Government Revenue had been made, were entitled to receive from the Ryots, these persons being entitled to appropriate to their own use the difference between the value of such proportion of the produce and the sum payable to the public; or in other words, the sum total of Zemindars' rent-roll, collected according to the *Perganah* rates, is equal to the sum total of the State proportion of the produce from every bigah of land,—an equation from which it follows that the *Perganah* rate is equal to the State proportion of the produce per bigah.

The parties with whom the Settlement was made would be thus entitled in virtue of the right which was thus transferred to them and under the correct interpretation of the term '*Perganah* rates,' as used in the regulation, to all advantages arising from increase of prices or produce. That this was the intention, also appears from the provisions of Section 51, under which the Talukdar's rent could be enhanced according to the capability of the soil. Now where was the Talukdar to get this increased rent to pay to the proprietor, unless he was to exercise a like power of enhancement with respect to his tenants? No restriction appears to

recognised by the Regulations has always maintained its ground. It is similar to the *Khudkas'* holdings in Bengal. The tenure derives its name from the Persian verb root *Goozasthan*, which means to *pass* signifying a tenure which *passes* from father to son, or from generation to generation. It is heritable, devizable and transferable. How much of the lands of Shahabad are held in *goozast* tenure it is hard to say; but the *Goozastdars'* position will be seriously affected when by the operation of the proposed *levelling* law their present high position amongst the Ryots, will be levelled down to an equality with that of ordinary Ryots.

have existed as to the Zemindar's right of fixing his own terms; nay, if he was an auction-purchaser at a public sale, he could even cancel existing engagements, and demand increased rent by the service of a notice on the Ryot (Vide Sec. IX of Reg. V of 1812.) There is no trace to be found in the earlier Regulations of Ryots with fixed rent. In the permanent plan for the ease and security of Ryots, as drawn up in Section 28 of the Resolutions on the Bengal Settlement quoted above, the rule for *Pottahs* to be granted to Ryots by zemindars was thus laid down:

"They shall begin with those *Perganahs* where the impositions are most numerous, and having obtained an account of them, shall in concert with the Ryots, consolidate the whole as far as possible into one specific sum, but so that in no case the sums demanded from the Ryots shall exceed three articles; *viz*, *Ausul*, *Abwab* and *Khurcha*; having prepared this account, they shall submit it to the Collector for his inspection, after which it is to be enforced by the authority of Government, and any enhancement of the *Abwab* or *Khurcha* to be punished as an extortion."

There was no restriction imposed as to the enhancement of *Ausul* and no fixed rates appear to have been contemplated.

Act X of 1859 encroached on the landlord's right of enhancement in several ways.

First—By creating a class of Ryots with fixed rents, with a presumption of law in their favor.

Secondly;—By fixing the grounds on which alone the rents of occupancy Ryots could be enhanced.

From what we have said before, it will also appear that at the date of the Permanent Settlement, the landlord's right of eviction in all cases excepting that of *Khudkast* Ryots in Bengal was left unrestricted. The only restriction under the condition of things as then prevailed, was that imposed by the paucity of the number of Ryots, that is, by the natural rule of supply and demand.

The rule, that Ryots with rights of occupancy (*i.e.*) *Khudkast* Ryots were not to be ejected as long as they paid rent was first laid down in Reg. VII of 1799 and as we have seen, not by way of restricting the landlord's power of eviction; but by way of enabling him to eject for non-payment of rent even *Khudkast* Ryots whose *Pottahs* he was not to cancel by clause 2 Section 60 of Reg. VIII of 1793.

As to the third proposition, it is admitted that as a matter of fact, previous to the enactment of Act X of 1859, rents used to be enhanced through Courts. It is said that the landlords in this matter outwitted the courts and contrived to take advantage of the rules framed for the benefit of auction-purchasers and for the protection of Government Revenue. Does not this cut at the very root of the position advanced that before and after the Permanent Settlement, the landlords had not the power to enhance rents? for if that was so, why was the privilege given to auction-purchasers; why was this necessary in the interest of Government Revenue? The auction-purchasers could simply come by the estates as they did exist at the Permanent Settlement and they were not surely entitled to get anything more.

The fourth proposition requires no comment.

NOTE ON THE PROPOSED ABOLITION OF THE LAW OF DISTRAINT.

The Commissioners base their recommendation for the abolition of the law of distraint on the ground (*a*) that it is an off-set of the English law, introduced for the first time in India, by Regulation XVII of 1793; (*b*) that the limitations imposed upon this power, by Act X of 1859, greatly impaired its efficacy; and (*c*) that there is evidence of the positive abuse of this power in Behar and other parts of the country. As to the first of these grounds, we find that Regulation XVII of 1793, merely re-enacted with alterations and amendments certain other regulations passed by the Governor-General in Council in 1792, empowering landholders and farmers of land to distrain and sell the personal property of under-farmers, Ryots and dependent Talukdars, and their sureties for arrears of rent and revenue. It was not thus for the first time introduced in India by Regulation XVII of 1793. Notwithstand-

ing the high authority of the Members of the Rent Commission we cannot but say, that the law of distraint was not borrowed from the English law, but originated in the Hindu laws, and immemorial custom, under which the creditor always enjoyed the power of realizing his dues from his debtors, by coercive means. The power was also recognized by the Mahomedan conquerors of India. The State, as owner of zemindaries yet enjoys very extensive powers to coerce its Ryots to pay rent. The second argument is no less than this. By our Act X of 1859, we have taken from you much of the coercive powers that were gvien to you by Regulation XVII of 1793; this has impaired the efficacy of the power that still remains. It is now useless to you, and we will abolish this altogether. We opine the Commissioners could not have been serious in using this as an argument. The limitation imposed by Act X of 1859 was this: under the old regulation law, the landlords were empowered to distrain and sell the crops and products of the earth of every description, the grain, cattle and all other personal property wherever found of the defaulting tenant and of their sureties; under Act X, the power of distraint came to be limited to the produce of the land on account of which the rent was due.

As to the third ground, we hold that the argument will apply to all kinds of rights, which might have been ever misused by any individual enjoying the right. For example; some zemindars may be found abusing their rights (powers) as a zemindar; argue, abolish all their rights (powers) or in other words abolish the class of zemindars. The zemindars say, why should you deprive us all of this power, the only one now left to enforce the prompt payment of our rent when some of our members only have been found abusing their powers; are not there some black sheep in all flock; why should the innocent suffer for the fault of the guilty. Why can't you guard the infraction of your laws, the abuse of this and other powers by enacting and enforcing your Penal laws. The Commissioners admit in Para. 9 of their report, that the Ryots as a body are daily becoming better acquainted with their rights, and they may be well trusted to protect themselves from the zemindary oppressions in the matter of the exaction of *illegal cesses*. If they can be trusted to protect themselves in that matter why can't they be trusted to protect themselves from zemindary abuse in the matter of distraint also. Admittedly, the zemindars have enjoyed the power from 1793, its harshness has been done away with by the enactment of 1859, and what power remains is very useful in as much as the mere existence of the power, acting as it were, as a threat, serves the purpose of inducing the Ryots in many cases, to pay their rents promptly.

N. B. For a lengthened discussion on this subject, the Committee beg to refer to the speech of their President, at the extraordinary meeting of the landholders of Behar, proceedings of which are herewith appended.

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THE PROCEEDINGS OF AN EXTRAORDINARY MEETING OF THE BEHAR LANDHOLDERS' ASSOCIATION HELD ON THE 5TH NOVEMBER 1880.

THE PROCEEDINGS OF AN EXTRAORDINARY MEETING OF THE BEHAR LANDHOLDERS' ASSOCIATION, HELD ON THE 5TH NOVEMBER 1880.

Pursuant to notice issued by the Secretary Behar Landholders' Association a meeting of the Zemindars of Behar was held at Bankipur, in the Sujjabagh House, at 3 P. M. on the 5th November, to discuss the provisions of the Draft Rent Bill submitted by the Rent Commission to the Government of Bengal for approval, and to adopt a memorial protesting against its enactment.

There were present at the Meeting —

His Highness the Hon'ble Lachmesswar Sing Bahadur, Maharajah of Durbangah, H. H. the Maharajah of Hatwa (represented by Babu Sheo Protap Narain B. L., his agent); H. H. the Maharajah of Doomraon, (represented by Babu Jaiprokash Lal, his Manager), Babu Sheopersad Sing (Shahabad); Babu Raghunundon Sing (Shahabad); Babu Basawan Sing (Shahabad); Babu Baidyanath Sahoo (Shahabad), Babu Harbans Sahai (Shahabad, Hony Secretary of the Behar Landholders' Association); Babu Jaiprokash Lal (Shahabad, and Manager, Raj Doomraon); Babu Bissesswar Sing (Shahabad); Babu Sang Ram Sing (Shahabad), Munshi Sheo Protap Narain (Sarun); Munshi Mohamed Amir (Patna); Moulvi Mohamed Ahmed (Patna), Moulvi Mohamed Wahid (Patna); Kazi Reza Hossein (Patna); Mir Sumshul Hoda (Patna); Moulvi Zeial u din (Patna), Munshi Janki Sahai (Patna); Rai Sultan Bahadur (Patna); Kooer Sukraj Bahadur (Patna); Syed Tafuzal Hossein Khan (Patna); Sheikh Fedai Ali (Patna); Syed Wajid Hossein (Patna); Amir Ali Khan (Patna); Moulvi Wahid-u-din (Gya); Moulvi Abdul Latif (Gya); Babu Bhoobun Lal (Tirhut, and Personal Assistant to H. H. The Maharajah of Durbhangah); Babu Jamuna Persad Sookul (Tirhut); Hajji Mohamed Wahid Ali Khan (Tirhut); Moulvi Mohamed Ashghar (Tirhut); Syed Bashorut Ali Khan (Monghyr); Babu Gobind Charan (Bhagalpur): Moulvi Syed Ali Ahmed (Purnea—and Diwan to Rajah Haider Reza); Bahadur Ali Khan (Barh); Babu Govind Proshad, Babu Madan Mohun Lal (Patna); Rai Jai Kissen (Patna). The Zemindar of Kanouli (Tirhut); the Zemindar of Champúr (Sarun), Munshi Sham Narain (Patna); Munshi Ehia (Patna); Omed Bahadur (Patna); Mohamed Shere (Behar), Syed Latafut Hossein (Patna); Hakim Mohamed Amir (Patna); Moulvi Sahid (Patna); Babu Kristo Chandra Ghose (Patna); Babu Radhakant (Patna); Shah Mehdi Hossein, Shah Sahid Hossein; Shah Latafat Hossein (Patna and Monghyr); Abdul Rahman Khan (Patna); Syed Ali (Patna); Syed Mirza; Khejeh Ali Mirza; Syed Amir Jan, Syed Ezahar Hossein, Syed Jishan Hossein (Patna); Khezeh Asadulh (Patna); Hafiz Shere Ali (Patna); Sheikh Wahid Ali (Patna); Moulvi Aleh Ahmed (Patna); Sheik Elahi Baksh (Patna); Syed Tasuduq Hossein Khan (Patna); Nonit Babu; Babu Balkishen; Babu Het Narain Singh (Patna); Babu Kunj Behari Singh (Patna); Babu Banwari Lal; Shah Liaqut Hossein (Patna), Syed Enaet Hossein (Patna); Syed Mohamed Qualim (Patna); Shah Mazhar Hossein (Patna); Babu Durga Dutt (Patna); and about 400 more wealthy representatives of all parts of the Province of Behar. There were also present some representatives of the press; the Reporters of the *Englishman* and *Indian Mirror* [Calcutta] and *Behar Herald* [Patna]. H. H. the Maharaj Kumer of Bettiah had intended to be present, but owing to unavoidable causes was compelled to absent himself. Letters expressive of cordial sympathy with the object of the meeting were also received from all parts of this province from Zemindars who could not attend His Highness, the Maharajah of Durbhangah President of the Behar Landholders' Association was unanimously voted to the Chair.

His Highness the President, in opening the proceedings, said that the object with which this extraordinary meeting had been convened was for the purpose of taking into consideration the provisions of the Draft Rent Bill submitted by the Rent Commissioners to the Government of Bengal for approval. Some three years ago, the Government had decided that changes were necessary in the existing law between Landlord and Tenant, and that some greater facility should be given to Zemindars to enable them to collect rents, at the same time making other and equivalent provisions to afford more rights to Ryots than they then enjoyed. The decision of Government had now borne fruit in the shape of the Rent Bill under discussion, which His Highness, the President considered to be altogether one-sided, and which, if passed, was calculated to give rise to immense litigation, annoyance, and heavy loss to Landholders with no advantage to Ryots. The chief objectionable item was undoubtedly the abolition of distraint and the hypothecation of land, in lieu of the produce of it, in the event of ryots falling into arrears with their rent. Hitherto distraint had been

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the great engine in the Landholder's hands to enable him to realise his rents. Legalized of late years, distraints of produce had from time immemorial been the acknowledged custom in India with Zemindars to recover that which was but their due by right; and the earliest form of payment of rent, within memory, was by the giving over, on the part of the Ryots, of a portion, generally one half, of the produce of the lands rented. This custom might be accepted as the earliest form of distraint also, as the moiety of the produce bore the form, as it were, of payment of rent in advance. These ancient customs it was now under consideration to do away with, and to substitute in their place the hypothecation of lands. The introduction of such a measure must inevitably be suicidal to the interests of Zemindars, as some speedy and legal means for the realization of their rents should be allowed to them, and it is everywhere admitted that distraints in accordance with the customs of the country gave these means to them without infringing on the interests of the ryots. It remained now to consider whether the hypothecation of land would furnish the place of distraints of produce or give Landlords a means of securing their rights. Again, the proposed Bill provided for the realization of arrear rent on account of tenures, occupancy holdings, and ordinary ryots' holdings. But in Behar there are very few, indeed, of these which affect in any way Landlords in this province. The proposed law gives a summary process for the sale of tenures on account of arrears, but does not provide for a similar process in respect of ryots' holdings. Of course, occupancy rights can be sold, but only in execution of decrees from the Civil Courts, or in other words after the tedious and expensive process enjoined by the Civil Procedure. Thus at the outset, whilst distraints of produce secured the Landlords their dues in matters of arrears of rents without recourse to law, the New Bill makes this step compulsory, and with it will come its attendants, delay and expense. Under any circumstance, if the Landlord resorted to this legal process and put up occupancy tenures for sale, his chances of recovering his arrears of rent were still doubtful. Villages in Behar, as in most other parts of India, are compact and generally of one community, the individual members of which have common ties and sympathies. Supposing therefore that the land of one such individual were put up for sale, the land upon which he, his father and forefathers, had dwelt for many past generations, what would be the result? The answer is simple. The whole community would combine not to buy it, and no outsider will be easily found bold enough to do so under the circumstances and with a full knowledge of the unwelcomeness of his presence. Mr. Field is in error when he surmises that, if one villager's land is put up for sale, another will greedily buy it. His Highness thought that those present would agree with him, that the proposed relief to landlords, would be found insufficient according to the tenor of the proposed Bill. There exists a class of tenants peculiar to Purneah and Dinagepur, who are semi-nomadic, who come to villages, stay for two years, cultivate and enjoy the lands they rent, and after the expiry of that short period decamp. There is no provision made in the new Bill for the sale of holdings lower than occupancy, therefore in the case of the ordinary short term ryot, often the most troublesome as regards his rent, distraint is disallowed, and no other remedy substituted, and in these cases, as also in those of the semi-nomads, if there be failure in the payment of rents, it would be difficult, under the unprovisional nature of the proposed Bill, to get anything out of defaulting ryots, even by civil process.

With respect to compensation to ryots, it appeared to His Highness that this provision as contained in the Bill was carried to a ridiculous extent. A ryot who has held, for say three years only, his right to land, may be evicted for non-payment of rent. The Landlord then, in order to secure or realize his arrears, must go to court. This eviction and subsequent claim to just dues must only be accomplished by the means of a long legal process. The eviction having at length been effected, the Landlord is bound to give his defaulting tenant compensation for trees which the latter may have planted, or huts he may have built on land for which he has paid no rent and also for disturbing him. The proposed Act lays down a ruling, that a ryot holding land for three years, is not liable to any enhancement of rent, and if such be imposed and he considers the rate too high, he is to be permitted to leave in spite of his arrears, but the zemindar must compensate him for disturbance, and improvements. Compensation is to be assessed by the court, and the chances are that the property will be overvalued. The landlord of course secures this compensation for rent due, but so far as he is concerned, the value of the trees and huts will be a poor set-off against the rent. With the disallowment of distraint the landlord cannot possibly have any fair means of securing his own interests, even by the sale of the ryot's effects—and the latter is even permitted to have a prior lien on them, adverse to his landlord's rights. His Highness then gave the following illustration of the probable working of the New Rent Bill in regard to the above:—A has been given a ryot's holding for a year, and in the course of that year has defaulted in his rent, or otherwise shown himself to be a bad ryot, and one to be got rid of. A can only be evicted by civil suit. During this process A is holding the land against the landholder's will, and thereby preventing B, a good ryot, coming into possession. Thus A pays no rent himself, preventing the landlord getting the rent B would gladly have paid. The only relief the new law would give the landlord, is that he can claim from A the letting value of the land. A being, most probably, a man not in a position to pay such value, the landlord loses the worth of his land for a year in consequence. His Highness observed that he saw no ground for the new and exceptionally unfavourable Rules—from a landlord's point of view—for Behar. He could not understand why a bad Ryot, roving about on an estate for 12 years, a year here, or

a year or two there, and if for the last 3 years of the period he manage to remain on one bit of land, that he should acquire the right of occupancy in it. A great deal was to be apprehended by the changing of land by ryots in Behar, and it would be found that these change more than ryots in any other part of India.

His Highness then concluded with the following remarks:—"This Act, if passed, would repeal in a great measure the Permanent Settlement, as, under the provisions of it, the Zemindar's proprietory right will gradually disappear, the ryots eventually acquiring new and absolute rights. The Zemindar will become a mere receiver of rents fixed, not by himself, but by Government, which he will find extremely difficult to realise. His revenues will be embarrassed, and his payments to Government will assuredly become irregular; in fact, if the new Act is carried, the regime of Zemindars must decline gradually, and with it the general contentment and prosperity of the ryots. Mahajans will be resorted to, and they alone will be those benefited by an Act which in no way concerns them. The extension of occupancy rights will press very heavily on the proprietors, and it seems to me that special provisions for allowing occupancy rights to be acquired, are required to be framed to meet the peculiar circumstances of Purneah and Dinagepore Jotes only, and should be legislated for specially; but the landlords in other parts of Bengal should not be made to suffer in order that relief may be given to cultivators in those Jotes. A memorial containing a firm and respectful protest against the new Bill has been prepared, which will be read to you, and I would invite remarks from any of you inclined to make any on it, as also on the subject on which, I fear, I have spoken at great length.

Babu Gobind Churn, M. A., then read in the vernacular, a "Note on the Rent Law by the Committee of the Behar Landholders' Association" to the meeting, as also the memorial to His Honor, the Lieutenant-Governor prepared by the same Association. These were received with marked approbation.

After a slight pause, His Highness, the President proposed the following resolution:—"That the provisions of the Draft Rent Law prepared by the members of the Rent Commission, vitally affect the proprietory interests of the Zemindars as guaranteed to them by the Permanent Settlement." The resolution was seconded by Kumar Sookraj Bahadur, and Babu Harbans Sahai, in supporting it, addressed the meeting, and after pointing out the disadvantages which would accrue to Zemindars by the passing of the New Rent Bill, stated that its conversion into law would be a grand opportunity for pleaders and Muktears to amass their fortunes, and the Government Revenues would show enormous increase on account of Court fee stamps in consequence of the heavy litigation which the provisions of the Bill under discussion would entail. He surmised that both landlords and tenants would be impoverished, and that it was the duty of Government to better the feelings of both towards one another instead of alienating them. A people who were disloyal, were punished with confiscation of their properties; but why, therefore, the speaker asked, should the natives of Behar and Bengal be now treated as such, when they were noted for their loyalty to Government. Babu Gajadhur Proshad also spoke in support of the resolution. The Resolution was carried unanimously.

Babu Jaiprokash Lal proposed the second Resolution, viz; "That the provisions of the Bill do not fall within the original scope of the amendment which had been proposed to be made in the law of landlord and tenant, nor do they fall within the power reserved to the Governor-General at the time of the Permanent Settlement, to enact laws for the protection and welfare of dependent talukdars and ryots. That the advantages offered by the Bill to the ryots are substantial and new, while those offered to the landlords are *nil*, and that by no means can the one be said to be an equivalent to the other The Bill, in fact, proposes a re-distribution of property between landlords and tenants, without offering any compensation to the landlord for what is taken away from the sum of their rights." He also said that the original object was to afford to the Zemindars, some facility for the collection of their rents; but the Bill, instead of affording any such facility confiscates all their rights, that is indeed a short way of doing justice; that the provisions are not at all justified by the power reserved to Government; that the rights conferred to Zemindars are in no way equivalent to those given to Ryots.

Babu Bhuwan Lall, the personal assistant to H. H. the Maharajah of Durbhangah in seconding the Resolution discussed all the points of law affecting the rights of both Zemindars and Ryots. Moulvi Syed Shamsul Hoda Moulvi Fazulul Rahman, and Moonshi Mahomed Amir supported the speaker, and the resolution was carried.

Babu Sheoprotab Narain (Agent for the Hatwa Raj) proposed the 3rd resolution: "That under the present circumstances of the country, when the tenants were daily awakening to a consciousness of their rights, and the Zemindars do not look with disfavour on the assertion of such rights as are vested in them by the present law, and when there are manifest signs all around that the condition of the peasantry is daily improving in Behar as in Bengal, the Zemindars of Behar justly look with apprehension to the unsettlement of the present laws, and with it the destruction of the customary tenures which have prevailed for generations in Behar. They are also apprehensive that the special provisions for Behar are calculated to affect seriously the interests of agriculture in this province.

Maulvi Jalal-uddin, supported by Syed Useff Hossein Khan and Babu Saligram Sing, seconded the Resolution, which was carried.

The following is the fourth Resolution, proposed by Munshi Sheoprotab Narain, seconded and supported by Kazi Reza Hossein and Maulvi

Alasin:—"That, holding these views, the meeting unanimously resolves to adopt the memorial of the Behar Landholders' Association to His Honor the Lieutenant-Governor of Bengal just read, and as they think that the Draft Bill is open to the criticisms which have been made with respect to it in a note prepared by the Committee of the said Association showing how the provisions of the Bill are detrimental alike to the interests of the landlord as also of the tenant; they unanimously resolve to adopt the said note as a part of their memorial."

Carried unanimously.

Kazi Reza Hossein then proposed, seconded by Sayad Bahadur Ali Khan: "That a committee consisting of a number of gentlemen with power to add to that number, be appointed in each district of the province of Behar for the purpose of obtaining signatures to the memorial and that the same, when signed, be sent to Government through the Behar Landholders' Association.

The Resolution was carried.

Munshi Fazl-ul Rahman, seconded by Kazi Reza Hossein, proposed the last Resolution *viz*,, "That the zemindars of Behar beg most respectfully to offer their hearty thanks to the worthy President of the Behar Landholders' Association."

This resolution was received and carried with loud applause, and the meeting broke up at about 4-50 P. M.

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No. 57C4., dated Camp Comillah, the 11th December 1880.

From—E. E. Lowis, Esq., Commissioner of the Chittagong Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

With reference to your letter No. 659A, dated the 30th July last, calling for a report on the draft of a Bill to amend the law of landlord and tenant, I have the honour to submit the following remarks.

2. Owing to the want of any Bengali translation of the proposed Bill, the different Collectors have found difficulty in ascertaining the opinion of the mass on its provisions. The time allowed too was so short that anything like detailed criticism by the public was impossible.

3. I circulated the English copy sent to me amongst the English-knowing vakils at Chittagong, and a meeting was held, and the proposed changes were explained by those gentlemen to such zemindars as attended. An expression of their opinion was then submitted to me, which I enclose in original. As I have noted, however, no time was found for detailed criticism, and the memorial does little more than indicate the sections in the Bill which are considered objectionable.

4. I have myself discussed the provisions of the Bill with zemindars and others in Chittagong and Noakholly, and I find that the most prominent grievance is that the proposed law does not provide some ready means for recovery of rents. The Chittagong landlords, by which term I mean not only the zemindars, but the talookdars, experience often great difficulties in the way of realization of undisputed rents, and they have been hoping that the labours of the Commission would result in the proposal of some way out of this difficulty.

5. It has been truly pointed out, and the experience of the Collectors of both Chittagong and Noakholly in khas management bears out the assertion, that the tenants exhibit an increasing unwillingness to satisfy lawful demands, and that the effort to meet the Government demand is becoming every year greater and more burdensome. During the year 1878-79 no less than 2,050 estates were sold for arrears of Government rent, while in 1879-80 there were 2,393 sales I cannot give the number of talooks sold during this period, but the number must be very large, for I know that the sales occupied several days on a stretch. I do not pretend to say that all these estates have been brought to the hammer because of the recusancy of the tenants in paying their rents; but my experience of Government khas management has shown me, beyond a doubt, that it is often a very difficult matter to induce the ryots to pay what is undisputedly due; and I have little doubt that many of these small estates are sold simply because the landlord is unable to realize his just dues.

6. In other parts of Bengal the ryots are doubtless not so independent and refractory as in this division, and zemindars in other places are still able to exercise some control over their tenantry; but as far as this portion of the country is concerned, the proposed Bill will not strengthen the hands of the proprietary class, whether zemindars or fixed tenure-holders, in the way they have hoped it would.

7. I observe that standing crops can no longer be distrained for arrears of rent. I cannot concur in the expediency of this omission. That the crop is hypothecated for the rent is a principle that is perfectly understood, and is one that is in accordance with all old established custom and practice; and I am not aware that the power hitherto vested in the landlords has been abused in such a way as to call for interference.

8. In Chittagong the landlords are too much in awe of their ryots to resort much to this means of realizing rent, though even here the knowledge that his landlord has the power to distrain his crop for arrears induces many a ryot to pay his rent with more promptitude than he might otherwise exhibit.

9. On the churs in Noakholly recovery of rent would be often impossible, unless the landlord had authority to distrain. Many ryots, especially on newly-formed churs, are non-resident. The only crop is rice, and when that has been gathered and disposed of to the merchants, whose boats are at his doors ready to purchase, the ryot is free to go, and does as a rule depart elsewhere. I do not know that distraint is by any means common amongst the holders of chur lands; but I am quite sure that if the ryots knew that their rents could only be realized after a regular suit, the realization of rent from them would be a more difficult matter than it is now.

10. The power hitherto vested in the landlord has facilitated the easy recovery of rents, the exercise of such power has entailed no hardship on the cultivators, and the abuse of it by the landlords has been so guarded against, that there appears to me no reason why the old-established custom, of considering the crop hypothecated for the rent, should be done away.

11. I observe also that the new law provides no procedure for suits for pottahs and kabuliyats, but has substituted for the old law the provisions of section 151. That section provides for the determination of only certain matters relating to condition of tenancy, and also contemplates only the decision of such disputes as between a landlord and his ryots, but does not provide for similar disputes between a landlord and his tenure-holders or under-tenure-holders. The matters alluded to in clauses (a), (b), (c), of section 151, do not cover all conditions of tenancy regarding which there may be uncertainty or dispute; and I think it would be simpler to re-enact the old law, and hold each tenant entitled to receive a pottah and liable

to be called on to give a corresponding kubuliyat, at the same time providing for an application being made to the court regarding the granting of such documents.

12. I now proceed to deal separately with such portions of the proposed law as appear to call for comment—

Chapter I.

13. The only new provision that appears to challenge criticism is the proposal to define the difference between a tenure and a ryoti holding, by enacting that every holding of above 100 bighas shall be considered to be a tenure; a holding below this limit may be a tenure, but above it cannot be a ryoti one. The distinction here enumerated is one that accords with no custom of the country, and corresponds with no system of land tenure with which I am acquainted in Bengal. It is a creature of our own creation, and meeting no recognized want in the present system, or being in sympathy with no popular movement, it must fail to be generally accepted; arbitrary distinctions, based on our own notions of what is convenient, but not in consonance with popular ideas on the subject, will not be generally adopted; and outside our courts of law the howladar will continue to hold at customary rates, and have his rent enhanced according to the *chanalia nirikh*, whatever the law may say, and it will only be on the occasion of a breach with his landlord that he will find himself, much to his surprise, and probably also to his annoyance, declared to be a tenure-holder, and liable to have his rent enhanced after a method the appropriateness of which he does not admit.

14. Such interference with the established order of things can only lead to confusion, and appears to be uncalled for and unnecessary. This distinction, moreover, is not only opposed to the custom of the country; it is also a provision which, if enforced, will certainly necessitate the revision and re-settlement of all the large chur settlements that have, with infinite trouble and at a great cost, been concluded, or are on the point of completion, in Noakholly.

15. I need hardly say that I refer to that *vexata questio* which has so long troubled us in Noakholly—the status and position of a howladar, a question which the provisions of section 11*a*, will not satisfactorily settle.

16. The holdings known as howlas, oshut talooks, and the like, are peculiar to the districts of Noakholly and Backergunge, and were originally created for the purpose of bringing under cultivation the large alluvial deposits covered with jungle, the gradual formation of, and additions to which, have partially created those districts, and which still are to be found in the course of the Megna river. These holdings, though differing in nomenclature, are all of the same nature, and entitle the possessor to hold at privileged rates, though such rates differ in different descriptions of holding, a howladar holding at one rate, and an oshat talookdar at another. Beyond the rate of rent, however, I do not find that these holdings differ in the rights conveyed. I may add that their position and status appears to be exactly described in the definition of a ryot in the proposed Bill.

17. These holdings are all let and sublet to a more or less degree, not according to any fixed rule, but at the caprice of the holder. In their inception, I believe, these Noakholly holdings to which I allude, do not materially differ from the large jotedari holdings of Rungpore; they certainly do not from similar holdings in Dinagepore, the owners of which, would be surprized to find themselves converted into tenure-holders.

18. The history of the formation of a howla is ordinarily thus: A person obtains from the owner or farmer of a chur or tract of waste the lease of a block of land at easy rates; he proceeds to bring a certain portion under cultivation, and portions of waste the cultivation of which he cannot undertake he leases out to nim-howladars at rates higher than his own.

The nim-howladars again cultivate some land and lease out portions to jotedars, or perhaps to subordinate howladars, who again relet to "kurpa-prajas."

19. On Government estates the existence of these howladars has been always acknowledged; sometimes they were called "abadkars," sometimes, I believe, talookdars, but their existence in some shape was always recognized by succeeding settlement officers, until, in 1874, on the re-settlement of chur Durvesh, the right of middlemen to intercept profits was called in question; and these howladars being considered as tenure-holders whose rights expired with the lease of the farmer who created them, an attempt was made to set them aside and settle direct with the ryots. Some of these howladars instituted suits, and the civil court, as I think properly, decided that they were ryots with rights of occupancy, and restored them to possession.

20. Since then our settlement proceedings have recognized the status of the howladar as a privileged ryot, who is entitled to hold at favourable rates; the idea of taking the rents payable to him as a basis for calculating the rent payable by him has been abandoned, and on these terms matters have been amicably settled. Government has got an increase of rent, and the howladar has his privileged rate of rent, and can call himself by his old title.

22. The area test, as set forth in section 11, would convert many of these holdings into tenures, certainly all the larger ones; and as all are held on precisely the same terms, and convey the same title, we would be compelled to call them all tenures—a position the howladars themselves would, I suspect, be the first to exclaim against, for they resent any proposal to calculate the rent payable by them on the basis of the rents payable by their under-tenants, they themselves being only allowed certain percentage as profit.

22. It would not also be always easy to say, under the proposed law, where the under-tenant merges into the cultivator, for the jotedar often comes in between the nim-howladar and the kurpa ryot, and sometimes is the only one between the howladar himself and the actual cultivator.

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23. To examplify my remarks, I give some particulars regarding holdings now existing on Government estates :—

No. I.—Chur Balamarak.

	B.	K.	CH.
Karari oshat talook, Sarveswar Mandal	2,671	7	13
Nij cultivation	495	10	10
Howladars	917	18	3
Jotedars	1,257	19	0

An oshat talook, I may observe, is supposed to be superior to a howla, and is held at rather more favourable rates. Under the proposed law the holding would be a tenure, and, I presume, the howladars under-tenures. What the jotedars would be I cannot say. Most of them have probably "basat or oshat" ryots between them and the actual cultivators, with nij cultivation as well.

24. Taking the arbitrary limit of area as a guide, it would, of course, be possible to discriminate, but the result would certainly not be satisfactory—that is, if it be the intention of the law to define existing, and not to create new, rights. As regards rents, moreover, the owner of this holding would as a tenure-holder find his position altered. At present he pays on an average Re. 1 or Re. 1-2 per bigah. If he is recognized as a tenure-holder, he would be liable for a reasonable rent on account of his nij cultivation,—it is not very clear what is meant by reasonable, but I presume something approaching the rate payable by the cultivating ryots, which would be perhaps Rs. 4 to Rs. 5 per bigah,—while for the rest of his holding he would be assessed as laid down in section 12.

No. II.—Chur Durvesh.

	B.	K.	CH.
Gaer mokarari meadi howla Bhubanjoydy Saha ...	1,640	4	5
Nim-howladars, &c.	1,526	1	10
Nij cultivation	114	2	11

25. This is a very typical case. The howladar has kept a considerable area in his own hands and leased the rest to nim-howladars, who again have sub-let to others, though to what extent I cannot say. At present the howladar pays 15 annas per bigah for rice land, Re. 1-5-8 per bigah for all sorts of bhiti, 4 annas for hikabadi, and an anna for molong chur. If he becomes a tenure-holder he will pay more than twice the above rates for his nij cultivation and be assessed on the rest of his holding as laid down in section 12.

No. III.—Chakla Bauchanagor.

Gaer mokarari howla Seboram Poddar, &c.—

		B.	K.	CH.
Bakshali Choudhuri		33	17	12
One howladar		33	17	12
Under the howladar...	Ryots	1	3	14
	Tenants-at-will cultivators ...	4	6	3
	Nim howla	28	18	13
Under the nim howladar.	Ryots	22	1	4
	Oshat ryots	0	18	7
	Tenants-at-will cultivators ...	4	11	5
	Nij cultivation	1	7	13

26. In this case the superior tenant would, though falling below the area limit, be termed a tenure-holder, all howlas being treated as tenures, and the "nim-howladar" an under-tenure-holder; but what position would the ryots occupy? Some have sublet and some have not, their original title being probably indentical. This man has no "nij" cultivation to render him liable to the imposition of a reasonable rent; but even so assessed under section 12, he would have to pay more than he does now.

27. Such men as these gain nothing whatever, so far as I can see, by being made tenure-holders; their status and position is not raised, and they become liable for increased rent, leviable in a manner which is not customary, and which involves an inquiry into their affairs, which they resent as an intrusion. These leases, whatever their nomenclature, are all heritable and transferable; they differ only in the rates at which they are held, such rates determining the social status of the holder and the market value of the holding. An oshat talook, for instance, is held at rather more favourable rates than a howla, and the position of an "oshat" talookdar is superior to that of a howladar; but both holdings are heritable, and transferable at will, though neither of them are tenures. All these leases are in their inception "abadkari"—*i.e.*, for purposes of cultivation, and cannot have originally involved any right or title intermediate between the zemindar and cultivator; while the fact of the original "abadkari" lease having been subsequently divided into smaller "abadkari" leases, does not take away the status of the original holder and turn him into a middleman with intermediate rights.

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28. In such cases it appears to me the area test fails us altogether. But while perceiving that section 11 fails to define the difference existing, to my mind, between tenures and the large ryoti holdings in Noakholly and Dinagepore, I was at a loss to supply a better definition, till I came across a suggestion made by Mr. Westmacott, the Collector of Noakholly, in his remarks on the draft Bill, which appears to me to give a truer definition of the difference existing between the above two classes of tenants.

29. On this subject the Collector remarks:

"There is an essential difference, as I take it, between a tenure-holder and a ryot, and that difference will be ascertained in the reply to the question—What is made over to the lessee by Government or the landlord? Is it land, or it is a body of ryots? If it be land not already occupied by ryots which is made over to a person to obtain produce from that land, whether by his own cultivation, or that of his hired servants, or that of sub-tenants, whom he may provide with all the necessary capital, or part of it, or none, that person is a ryot and is entitled to all the privileges which Indian custom in various parts of the country assigns to the ryot or cultivator of the soil. He possesses a certain right and interest in the soil he cultivates, limited perhaps by the terms of his lease.

30. "Thus the 'abadkar' of Noakholly, the inferior howladar, the nim-howladar, are only ryots; the great jotedar of Rungpore and Dinagepore, who lives like a country squire, keeps an elephant, and probably lends to poor ryots a capital of several thousand rupees, makes roads and bridges, builds mosques, and gives away much in charity, is nothing but a ryot.

31. "In Noakholly a jotedar is rather an inferior class of ryot, but pays 'salami' to his landlord. He may be promoted to be a 'nim-howladar,' the 'nim-howladar' may become a 'howladar,' the 'howladar' may become a 'talookdar,' but at the same time he is only a promoted ryot and not a middleman. He may or may not plough some or all of his land himself. If a man of this status who holds more than a 100 bigahs is to be a tenure-holder and not a ryot, we shall find his sub-ryots treading on his heels and claiming all the privileges of the Indian ryot, which as a ryot's tenants they could never claim: we then rob the ryot if we promote him to be a middleman. Why interfere between him and his sub-tenants?

32. "On the other hand, if what the lessee obtains is not land, but only certain rights over a body of ryots who already cultivate the land, he is a tenure-holder. He is a substituted landlord or person to whom some or all of the rights and interests of the landlord in the soil are alienated; but whatever his title, he does not obtain one iota of that distinct right and interest in the soil which belongs to the ryot, and not to Government or the landlord.

33. "If we say that because this man does not hold 100 bigahs of land he is not a tenure-holder but a ryot, it seems to me that we rob both the landlord above and the ryot below, giving the middleman a ryot's privileges which he never possessed and never was intended to possess."

Chapter III.

34. *Clause* 19.—Great objection is taken to clause (*c*), whereby it is proposed to allow persons holding under an occupancy ryot to acquire rights of occupancy; nor, I think, is such objection altogether without foundation, for such rights are not now possessed by the tenants of occupancy ryots, and there seems to be no reason why they should be bestowed.

35. The creation of such rights within rights is likely to lead to confusion; and as the position and status of such ryots is already defined by custom—the unwritten law of the country—it seems useless interfering in the matter. By the proposed change we relieve no pressing want and remedy no crying evil, we merely introduce an element of discord where mutual relations are now satisfactory, and tend to create dissatisfaction with the customary laws that now rule the transactions between large bodies of the people, and induce them instead to have recourse to litigation. Such a change has already began to pass over the people of Bengal, and I would deprecate any legislation that tends to accelerate the movement.

36. *Section* 20, *Clause* (*d*).—The provision against borrowing by the ryot on the security of his holding is, so far as my experience goes, quite uncalled for.

In Dinagepore and in this division, in fact I believe throughout Eastern Bengal, the ryot who is in need of money does not, as a rule, have recourse to the assistance of the traditional money-lender, in whose clutches he becomes so involved as soon to cease to be a freeman. On the contrary help is obtained from some fellow-villagers of substance, and such debts are repaid without reducing the borrower to absolute want.

37. The pictures drawn of the greedy bunneah grinding the faces of the toiling cultivators do not pourtray the real state of things in most parts of Bengal with which I am acquainted, and it will not be found that the lands are passing into the hands of a non-agricultural money-lending class as appears to be the case in other parts of India.

It often happens that the ryot must borrow in order to live out some catastrophe that has for the time being deprived him of his existing capital. After the cyclone of 1876 had the ryots on our Government estates, and elsewhere, been unable to borrow money on the security of their holdings to enable them to purchase cattle and implements of agriculture, I am quite sure they would not have recovered from that calamity as rapidly as they have done.

38. I am quite sure, moreover, that the ryots are quite shrewd enough to find some way of evading the law, and that if they have need of money they will find some means of obtaining it, even though mortgaging may be forbidden. Even now it is not an uncommon practice

to make a conditional sale of land which is in reality mortgaged; the deed may show an out-and-out transfer, while there may be an agreement, often verbal, that on repayment of principal and interest the property is to revert to the seller.

39. *Section* 20, *clause* (*e*).—This provision will be hard on the landlord, the land is his only security for the rent, and if a tenant declines to pay his just dues, there appears to be no reason for allowing him to continue in occupation of the land.

40. *Section* 23, *clause* (*e*)—Appears to me objectionable. Such restrictions are not, so far as I know, called for; and the attempt to enforce them will lead to endless litigation, and throw almost insurmountable obstacles in the way of enhancement.

Chapter IV.

41. I would omit this Chapter altogether. Whatever opinions may be expressed regarding other portions of the draft Bill, I have heard but one regarding the three-year occupancy. Every one appears to agree in condemning the proposal. The twelve-year occupancy was accepted by the landlords with bad grace; it was felt to be an innovation: and the first promulgation of Act X caused an immense amount of litigation, and embittered the relations between landlords and tenants. The stir then caused has subsided, Act X has been accepted, and most landlords have been taking precautions against allowing their ryots to obtain occupancy rights. To re-open this question would, it appears to me, be most inadvisable.

Chapter VI.

42. *Section* 36.—The right to erect a brick or other dwelling house, without the permission of his landlord, is proposed to be vested in ryots entitled to hold at fixed rates, section 16; and to ryots who have held for less than 12, but more than three, years, section 26; no mention is made of occupancy ryots who have more title to such favour than ryots under section 26.

43. I do not understand what existing hardship this provision of the law is proposed to meet, for I do not know that any impediment is ever thrown in the way of a ryot who wishes to erect a house on part of his holding, or that he ever has any difficulty in procuring a piece of bhiti land at the rate prevalent in the neighbourhood. Such a ryot hardly ever wishes to erect a brick dwelling-house; if he does, he can easily obtain a permanent lease from his landlord for the purpose. I do not perceive any reason for altering the present custom of obtaining the landlord's sanction to the erection of permanent buildings; though, if the limit of a ryoti holding be 100 bigahs, the case of a ryot wanting a brick house will be exceptional indeed.

Chapter VIII.

44. The registration of tenures and holdings is an important matter, and if its observance be enforced, a blow will be struck at the system of "benami" transactions, which are so prevalent in this country.

45. A systematic record of all transfers of tenures and holdings has more than once formed the subject of legislation, but such legislation has hitherto been inoperative, I believe principally because neither landlord nor tenant was interested in having the true facts recorded, and, under such circumstances, I doubt whether the proposed law will secure any better results. It is true certain penalties follow on non-registration; but what if the two parties interested agree that the penalties shall not be enforced? The zemindar will generally be in the hands of his amlah as regards the registrations of transfers, and if it is to the interest of the latter that the law should become a dead-letter, will not its provisions be evaded?

46. I observe also that no provision has been made for registering in more than one sherista. Where there are many shareholders it often happens that a tenant pays rents to more than one proprietor and in more than one cutcherry. Will he, under the proposed law, have to register in the sherista of each sharer to whom he pays rent, and will he have to pay a separate fee in each case?

47. Looking to the difficulty that may arise in the case of co-sharers, especially to the extreme difficulty, if not impossibility, of enforcing these provisions amongst the small proprietors in Chittagong, and having regard to the indifference which the landlords have always shown to the enforcement of this procedure, I consider that the duty of registering transfers might with advantage devolve, not upon the amlah of the zemindar's sherista, but upon some separate agency.

48. Why should not the work be performed by the Rural Sub-Registrars, the fees being paid to them, and a register for each estate within their jurisdiction being opened by them? Thus the difficulty where there are co-sharers would be avoided, and as registrations would be frequent, the profit accruing from fees might enable the number of Rural Sub-Registrars' offices to be increased.

49. Unless some such scheme be adopted, I foresee almost insurmountable difficulties in the way of enforcing registration of transfers in Chittagong; for very many of the estates in that district are very, very small, and are often owned by ignorant and illiterate persons, who, so far from having amlah, very often keep very little in the way of accounts at all.

50. To ensure the success however of any such scheme, it would be necessary, to enact that no title not registered will be recognized in any suit for arrears; in any dispute about land; in any answer to a suit for enhancement, or in any other suit of that nature; with such

a penalty before them, in the event of non-compliance with the provisions of the law, I am quite sure that registration would be rigidly attended to. I would at the same time raise the limit of period during which registration should be effected to six months. It would be necessary also for a time, and until the people come to understand thoroughly the penalty attaching to non-performance, to permit registration after the expiry of this limited period on easy terms.

Chapter X.

51. Section 65 allows any one having an interest in an estate to apply to the District Judge for the appointment of a common manager. It would be better, in order to avoid this provision being taken advantage of to harass co-sharers, to enact that such application should be made by the majority of those interested.

52. The provisions of this Chapter, as well as the proposals regarding granting of receipts to tenants, and keeping of bound books of receipts (section 57) and the keeping up of registers of successions and transfers, will be felt to be a great hardship by many of the landed proprietors in Chittagong; in fact, it will be often quite impossible for them to satisfy the requirements of the proposed law.

53. It must be borne in mind that the general run of estates in Chittagong are very small; hundreds of separate estates do not pay more than Rs. 5 Government revenue each, and the owners of these plots of land are often illiterate and ignorant persons, who live in a very humble style. It may seem absurd to regard these men as zemindars; but as each of these estates has a separate number on the Collector's towjih, the law will apply to them in the same manner as to the large zemindars of other districts. The conditions of landed property in Chittagong are so peculiar and so dissimilar from those to be found in other parts of Bengal, as almost to call for special legislation.

Chapter XV.

54. *Section* 99 *et seq.*—This portion of the proposed law meets with the approval of all classes; and I am sure that the Collector will often be applied to to fix a table of rates. The authoritative determination of the "nirikh" by the paramount power is in consonance with native traditions, and in some districts the pergunnah "nirikh" is still to be heard of.

55. I quite agree with Mr. Dampier in considering that the new procedure will become popular with the landlords, and I believe also with the villagers. It will be necessary therefore to provide, in the manner proposed, against the Revenue authorities being overwhelmed with work suddenly thrown on their hands.

56. It has been suggested that the opportunity should be taken to re-establish the old pergunnah "nirikh," every Collector in fact, by means of a special agency, being called on to determine a table of rates for his district, suitable to the present condition of things.

57. On this subject Mr. Westmacott, who considers that the present is a fitting opportunity to revive something like the old pergunnah rates, each Collector preparing a table of rates for his own district, remarks as follows:—

"I will only consider how the revision is to be made. I say that it should be made by the Revenue authorities in every district and every part of a district, and not left to native Deputy Collectors, but generally supervised by the Collector himself, subject to revision by the Commissioner and Revenue Board. As the great object is to ascertain the truth, I can see no object in fettering the judgment of the Revenue authorities by prescribing a limit, be it a quarter of the gross product or anything else.

58. "The Collector has to consider very many varying points. The introduction of new staples; the dying out of old ones; the drying up of large tracts, which now produce one crop instead of two, or two or three instead of one; why not leave him to decide what is fair and equitable, without hampering him by any limit? A Collector must first find out what the ryots of a certain class are paying now, and must then trace back the regular annual payments as far as he can. Whenever he finds that a change in rents has been general, he must note that, as a period for examination, and then, if he can, carry back his inquiry to another similar period, and so on. Having thus ascertained several periods at which rents were changed, he must ascertain as fully as possible the circumstances of each period, and compare them with one another, and with the present. He must ask whether the land was then producing cold weather crops as well as autumn and winter rice; whether the ryot on an average of years got anything from indigo or sugarcane; when the cultivation of jute came in, and, considering the labour of preparing it for market, what are the profits from it."

59. "No law can define all these points; prices are of course an important element in the enquiry, and that of competition for land must not be left out. What has to be ascertained is the proportion between rent and gross produce at each period fixed for inquiry. But this is not enough; I also think the zemindar must be allowed some benefit from increased competition for land, which may arise from increased healthiness in the locality, the opening of a railway, or the development of a great mart, and this is a point which will require the exercise of great discretion, which cannot be defined by law, but must be left to the Revenue authorities.

60. "All materials for the inquiry will be collected by Deputy Collectors, but examined by the Collector, and I think such procedure supervised by the Commissioner and Board of Revenue is quite as likely to do justice as any civil court.

61. "I do not think one-fourth of the average annual value of the gross produce should be taken as the maximum limit, or ultimate test of the equity of the occupancy ryot's rent. Should a Collector exceed such limit, the superior Revenue authorities should very closely scrutinize his proceedings; but I object to all limits laid down by law, as I have pointed out, this limit will not apply to the homestead land, and I doubt whether it will apply to thatching grass, though I am not sure of this.

62. "I do not think a Collector can always lay down beforehand the area to be affected by the pergunnah rate he is proceeding to fix. He may very well find that his area requires sub-division, and that he cannot fix rates that shall be equally applicable to the whole of it. On the other hand, he should have the power of extending the area originally proposed for enquiry, while giving every one interested full opportunity of making their claims and objections known."

63. The suggestion is certainly worth considering. Had any such thing as a table of rates, sanctioned by authority, been in existence 20 years ago, I am sure that a great mass of litigation would have been avoided, and the constant disputes about rent and enhancement obviated, that have done so much of late years to embitter the relations between landlord and tenant.

64. The work of determining rates of rent for the different classes of lands and ryots would not in any district be a light work, and in many it would be a most onerous one, and the accomplishment of such an undertaking would involve considerable expenditure; but if accomplished, such a schedule of rates would be an inestimable boon to the people, and its subsequent revision and alteration would not be difficult.

65. With such a table prepared for each district, the Collector need not be called on to interfere in the matter of enhancement of rents, as the civil courts would then be in a position to deal with such questions, except in cases falling under section 112 *et seq.*, which would still have to be dealt with by the Revenue authorities.

From—LALLCHAND CHOWDRY and others,

To—The Commissioner of the Chittagong Division.

As directed by you, we have the honor to submit the following report on the Rent Bill.

A meeting of zemindars and other native gentlemen was held to discuss the alterations in the rent law as embodied in the bill. Those who attended the meeting expressed their humble opinion that it was not desirable to create rights for one class by encroaching upon those of the other.

We think that the bill, instead of simplifying the relations of the two classes, will really complicate those relations.

Act X granted new rights to the tenant. The Legislature then wanted to improve the position of that class, and to place restrictions on the power of the landlord. We submit that no case has been made out for grant of fresh rights to the tenant.

The tenant does not require further assistance from the Government. It is the landlord who does. The Government having compelled the landlord to collect the road and public works cesses from the tenant as rent, the landlord is in need of a simple procedure for collection of rent.

The bill does not propose to grant any such procedure; on the other hand, it proposes to abolish the existing law upon the subject of distraint.

The Government hold sales of estates upon non-payment of revenue on specified dates. The large number of sales held of late years in this district proves the difficulty that the landlord feels in the realisation of rent on or before those dates.

In Chittagong the estates being petty, the landlords generally have no influence. They have to go to Court for realisation of their dues, but they cannot sue annually, for the expense of suing is not small. The rent-suits are generally brought at the end of every three years. In such a state of things distraint, which is widely resorted to, cannot be dispensed with.

The value of land has gradually fallen in this district. One reason, among others, for this is the difficulty which is felt in getting rent-decrees passed and executed. The existing law makes rent-decrees for sums below Rs. 500 inoperative after three years; but in Chittagong the rent-decrees are generally for sums below Rs. 500.

It sometimes happens that the cost of a rent-suit is greater than the rent itself. The position of petty landholders under the existing law is therefore insecure.

CHAPTERS I AND II.

The Bill proposes to define (section 3) the distinction between tenure-holders and ryots. In section 11 it enacts an arbitrary rule for the determination of the tenant's status.

We think that no definitions of tenancies and tenants, however well made, will suit all districts. The attempt to promote the ryot to the status of the tenure-holder is novel, and will hardly apply to Chittagong, where the ryoti holdings are generally small.

In Chittagong the talukdars cultivate generally their taluk land. They ought not to be considered ryots because of the definition in section 3.

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The Bill proposes an exception to 20 years' presumption (sections 6 and 17) in respect of tenures and ryoti holdings in estates not permanently settled. We think that this is not equitable. When Government has thought proper to protect its own interests, the petty landlords of Chittagong may fairly expect the same protection.

The maximum of 30 per cent. fixed as the limit (section 9) of a tenure-holder's profit is new. Section 8, Regulation V of 1812, fixed the limit at 10 per cent. of his collections. There is no good ground for the increase.

The Bill proposes progressive enhancement and limitations (sections 10 and 23) of enhancement. Progressive enhancement is unnecessary when the land is not waste. The delay may affect the grounds of enhancement.

These sections for the first time propose that the rent once enhanced shall not be liable to enhancement for a period of 10 years. This is not desirable.

Section 17, like section 6*b*, ought to provide that the suit or proceeding must be "under this Act."

Chapter III.

The Bill provides for extending (section 19) the right of occupancy (1) to those who have held under a makarridar or istemraridar, and (2) to sub-ryots who have held otherwise than for a term, or year by year, under ryots having rights of occupancy.

The High Court has decided that the sub-tenants can acquire no right of occupancy. The new provisions are encroachments upon the rights of the landlord and the ryots having rights of occupancy.

Section 20 prevents the mortgage of a right of occupancy, but makes it saleable. This is quite new, and not desirable.

Section 20*e*.—This clause abolishes altogether the law of ejectment for arrears. It provides for compensation in case of ejectment for breach of stipulation. This is a serious encroachment upon the landlord's rights.

Section 21.—Regarding rent in kind, the landlord's share of the produce is limited to 50 per cent. There are some places where the share is $\frac{9}{16}$ or $\frac{10}{16}$. Contracts ought not therefore to be interfered with.

Section 22.—The illustrations may be omitted As regards enhancement on excess land, where the rent is fixed at so much per *kani* (illustration *c*) there is no reason why there should not be enhancement for increase of area, whether the boundaries are definite or not.

Section 25, regarding abatement, does not contain any illustrations.

Section 23, introduces limits to enhancement, as in sections 9 and 10. The rule of proportion as laid down in the great Rent Case is the most unobjectionable standard.

Chapter IV.

Sections 26 *and* 27.—These sections give to three-year tenants rights of occupancy in a modified form, perhaps with better advantages.

These three-year ryots are protected from ejectment at the will of the landlord. They are declared entitled to abatement like occupancy ryots. The landlord is declared incompetent to enhance their rent at his will. If they think that the rent demanded by the landlord is unreasonable, they may give up the land and demand from the landlord compensation for disturbance and compensation for cost of improvements. They shall be entitled to hold on at the old rent if the landlord does not give them such compensation.

The creation of such a class of tenant is an encroachment of a very serious nature upon the landlord's rights. We think, however, that the above rules will inconvenience the tenant also, for the landlord in this district will not in future allow the land to remain with the tenant for more than a year or two.

In Chittagong a great number of the landlords carry on cultivation by themselves and by their servants. Instead, therefore, of asking for compensation, the tenant ought to thank the landlord for allowing him to cultivate.

Section 29 defines improvements. It is against the custom of the country for a tenant to erect a pucca or other substantial house and dig tanks or wells without permission of the landlord, except upon lands perpetually leased to him. The proposed rule granting powers to the tenant to do so is an encroachment upon the landlord's right.

Section 30. provides that the decree for compensation, if the amount does not exceed Rs. 50, shall be final. This is objectionable, more specially as in this district the decrees will hardly exceed that amount.

Section 31.—If the tenant can claim abatement, there is no reason why the landlord cannot claim enhancement without fear of being made liable for compensation. If the abatement is not allowed by the landlord, the penalty is compensation. This is inequitable.

Chapter V.

Section 35.—As regards ryots holding for less than three years, they are treated as tenants-at-will. If a ryot does not relinquish after notice, he ought to pay the increased rent demanded.

Chapter VI.

Sections 36-40.—These rules give all ryots, without any limitation whatever as to their status or rights, power to build brick-built and other houses and out-offices on the lands let to them without the landlord's permission. This is against the custom of the country.

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Why should the ryot apply land to a purpose for which it was not originally intended? He should not build upon arable land and thus convert it into *bastu*. Contracts ought not to be interfered with.

Section 39.—The ryot is declared entitled to compensation if from the landlord's ignorance of the changed use of the land he (landlord) fails to give notice of objection within a reasonable time. This is objectionable. The ryot intentionally making an improper use of the land is more to blame than the landlord, whose only fault is that he does not look after his property, however large or at whatever distance it may be.

Section 40.—The landlord being aware and allowing the ryot without objection to spend money and not serving notice for two years, is declared estopped. This rule will be productive of much litigation.

Section 41.—This section extends the right of occupancy to ryots holding homestead and other lands. This will give a right of occupancy to shop-keepers, artisans, traders in marts and towns. When any persons require land for permanent residence, they generally take permanent leases. A ryot by building upon arable land can easily reduce the rent of his holding. Under section 42 the maximum rent is fixed at 5 per cent. of the market value. This is highly objectionable, as it will considerably diminish the landlord's rights. The rent of shop-keepers, &c., is considerably above 5 per cent.

Chapter VII.

The provisions for merger are new, but not very important.

Chapter VIII.

The rules for registration of transfers are intended to benefit the landlord. He is, however, more in need of an easy procedure for recovery and enhancement of rent than these rules.

Section 48 (*c* & *d*).—Will tenures be liable after execution-purchases and successions for rents of the defaulters and the deceased?

Section 54.—The Board has been authorised to prescribe registers for registration of transfer, and the landlord will be bound to give copies of entries in such registers. The petty landlords of Chittagong will find great difficulty in carrying out these provisions.

Chapter IX.

Section 56 allows interest on rent. The exception to it is indefinite.

Section 57.—The landlords are declared bound to keep book-forms of receipts and accounts, and to give a statement of account at the end of the year to every ryot who shall want it. This will not be easy in Chittagong.

Section 61*b*.—The cost of serving notice of deposits of rent is to be deducted from the deposit. Deposits may sometimes be made on a false plea of tender of full rent.

Sections 62-63.—It has been lately ruled in a case that a co-parcener has a right to have his share of the rent apportioned by a suit in Court. These sections curtail that right when they say that "two or more persons becoming separately entitled to separate portions of an area of land can sue for apportionment."

Section 64.—Both the land and the crops on it have always been deemed to be hypothecated for the rent, but the Bill makes only the former hypothecated. We consider that this is not based on any solid ground.

Chapter X.

The provisions for the appointment of managers by the Court (sections 65-67) for landlords on the application of tenants in joint estates are not necessary. It will be in the power of a bad ryot or a person whose share is small or disputed to harass the proprietors. The rules will be hardly applicable to Chittagong, where the joint-sharers are holders of petty estates. When the rent is apportioned, there is no fear of annoyance.

Chapter XI.

Section 71 (2).—In many cases the tenant has contracted to pay *bhet* (cess), of which a money value has been put, in consequence of which the rent has been fixed at a reduced rate. Will not this section affect these stipulations?

Section 72.—Revenue authorities to approve of custom in respect of any cess customary. What will become of *salamies* and fees? Government requires *russuds* to be supplied. How will the landlord carry out Government orders?

Section 73.—Landlord bound to put tenant into possession. This will be unnecessary where the tenants contract to take possession without the landlord's assistance. If the tenant neglect to sue, it will be difficult in many cases to obtain possession.

Section 77.—This section empowers ryots to make improvements without materially altering the condition of the land. Is not converting arable land into *bastu* material alteration? This section also declares a ryot entitled, any custom to the contrary notwithstanding, to cut down and appropriate trees planted by him or by his predecessor in title. It is against the custom of the country for tenants to cut valuable trees. It is also against the decision of Courts.

If after cutting the valuable trees the ryots relinquish the land, the letting value will be materially reduced. Customs and contracts ought not to be disturbed.

Section 79, *clause* 4.—If the tenant abandons the land, the landlord cannot consider the tenancy determined except after a year. Will the land remain uncultivated during this time and the landlord lose his rent?

Section 80.—This section provides that when a ryot is ejected, he shall be entitled to the crops. The High Court has decided that the crops go to the landlord with the land. No necessity for any change in the law has been made out.

CHAPTER XII—(For Behar).
" XIII.—(Damages and Penalties).
" XIV.—(Limitation).
} No remarks are called for.

CHAPTER XV.

Sections 95-132.—These sections prescribe rules for enhancement. Section 106 directs that the whole of the costs, if the Collector be satisfied that the landlord was unable to put the table of rates in force in consequence of the recusant or unreasonable conduct of the ryot, shall be paid by the ryot. But section 128 provides that the costs payable by any ryot shall never exceed one year's rent as settled by the enhancement proceedings. It also directs that the costs shall be paid by instalments extending over three years. This is objectionable.

Sections 111 *and* 105.—The table of rates and enhanced jamabandi to hold good for ten years. There is no limitation as to the tenant's right to claim abatement.

Sections 133 *to* 145 reproduce the provisions of Regulation VIII of 1819 and other laws with regard to patni and other tenures.

Section 150*b*.—Declares that notices served upon naibs or gomastahs shall be deemed good service of notice on the landlord himself. This is quite new. It is inapplicable to Chittagong, where the zemindar's servants are low-paid, and therefore very corrupt.

Sections 165 *to* 200 relate to the procedure of suits.

Sections 203 *to* 208.—These sections introduce a change in the existing law. They recommend that the sale of a tenure should be in the first instance subject to the encumbrances created by the defaulter, and it is only when the amount of bid does not cover the amount of the decree and costs that the tenure or holding shall be again put up to sale and sold free of encumbrances. No necessity has been made out for this change, which does not exist in the Revenue sale law.

These provisions will encourage fraud and lead to increase of litigation. The tenures are allowed by the tenants to be sold when they, having encumbered them, are unable to pay the rent. Section 207*b* says that if no bid is made, the decree-holder shall be required to bid. If he refuses to do so, he shall not be entitled to execute the decree against the person or other property. This rule is quite new; but in this case it is provided that the sale shall be free of encumbrances.

Section 210—This section and article 16, schedule 3, allows one year's time to landlord to avoid and annul encumbrances. The existing law (article 121 of section 2, Act XV of 1877) allows 12 years. The shortening of the time is not desirable. The tenant gains more by increase of time, which gives him more opportunities for making amicable settlements.

Section 220—This section provides that there shall be no appeal from a decree for arrears in which the amount does not exceed Rs. 10. This is quite inapplicable to the conditions of Chittagorg landlords.

Schedule 3, *article* 15, appears to conflict with the provisions of section 4

To conclude, we submit that the time allowed for comments is quite insufficient, considering the voluminous matter embodied in the Report and the Bill drafted by the Commission.

We think the landlords of Chittagong cannot appreciate the slight advantages which the Bill proposes to give them when they find that encroachment of a very large character is about to be made upon their rights.

J A R—Reg No 10380J—118—13-1-81

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Dated Calcutta, the 21st January 1881.

From—Babu Kishari Lal Sarkar, Pleader, High Court,

To—The Secretary to the Government of Bengal, Legislative Department.

Encouraged by the fact that the Government is inviting the opinions of all classes of persons on the question of landlord and tenant, I would beg to say a few words on the subject. Being a private individual, I should have deemed it altogether out of the way to intrude myself upon matters of legislative concern, had it not been that for a long time business had frequently led me think on and study the rent question, so that I felt it a duty to express briefly my humble views on the subject, now that it is being so thoroughly sifted by the Government.

The main questions taken up by the Government may be put in the following consolidated form—"What should be the position of the actual cultivator or ryot (1) as regards the amount of rent demandable by the landlord; (2) as regards his power of sub-letting; (3) as regards the transferability of his holding."

Before considering the points presented above, I would take the liberty of saying how, in my humble opinion, the subject should be dealt with. I humbly think that the discussion of the subject should be preceded by an investigation of facts. Before taking up the question what *should be* the position of the ryot as to the three points, it should be carefully ascertained what his position all along *has been*, and at present *is*, as regards those points. The study of the existing law and precedents might be supposed to throw light on the subject. Unfortunately it is not so. If it throws any light at all, that is a misleading light. For a long time the Acts of the Legislature have rested on assumptions, and where they have laid down rules those have been of a general character, without any attempt to make them specific with reference to actual facts. For instance, Act X lays it down—at any rate it has been interpreted to lay down—that the ratio at any given time between the rent actually paid and the value of the gross produce should ever be maintained. But it was never thought necessary to have even a rough idea of what that proportion was in different parts of Bengal, and in respect to different descriptions of land. But more important than the ascertainment of the ratio between the actual rent and gross produce, is to know the ratio between the rent and the nett produce. The task is no doubt a difficult one, but as it seems to be almost a necessity, in order to come to a satisfactory solution of the real difficulty of the rent question, Government might well make an effort in this direction. And it might not be altogether an impracticable thing for the Government to accomplish. Ascertain the nett produce—in other words the gross produce and the cost of cultivation—of five plots of *beel* land, and you ascertain the same for perhaps five times fifty thousands of acres. Determine, again, the nett produce of three plots of sugarcane lands, and you settle the question of three thousand acres of land. Take the case of a few plots of navigable riverside land, a few of non-navigable riverside land, a few of land for which irrigation is necessary—as in the high land districts such as Burdwan; a few of jute-producing as in Rajshahye and Pubna; a few of chilli-producing land as in Nuddea and Jessore; a few of mulberry land, &c. A hundred of such specimens of lands will nearly exhaust all classes of land broadly demarcated from each other. A few special Deputy Collectors, with the agency of Kanoongoes, and with the advantage of khas mahal experience may well be expected to do the work. If this is done, Government will be able to see in the light instead of groping in the dark. If the idea of His Honor the Lieutenant-Governor as to District Commissioners be carried out, it is to be hoped that they may be charged with the duty of ascertaining facts as above, and proceed on the same in settling the rates.

To return to the first of the three questions stated at the outset. What should be the position of the ryot as regards the amount of rent demandable by the landlord? Now, agreeably to my humble method of proceeding, I shall first try to answer the question what *is* the position of the ryots as regards this point, so far as this can be done in the absence of detailed facts, by looking merely to general customs and broad usages. The first thing to note on this point is the anomalous and mischievous propositions laid down by Act X of 1859, creating what it took to be a special class of tenants under the name of occupancy ryots. The rights which the Legislature in 1859 thought it was conferring on a portion of the tenantry by an act of grace were in fact enjoyed by all ryots whatever. They enjoyed even greater rights than these. The Legislature conceived it was giving new rights, and in that view limited the acquisition thereof by the condition of holding for twelve years. Nothing could be a greater anomaly that this introduction of the element of time into the question. As a matter of fact, the zemindar never exacted more because of a ryot having held the tenure for a shorter period, nor less for his having held for a longer period. The twenty years' rule as well as the twelve years' rule are both equally novel and mischievous. If the question of ejectment be considered, the same remarks hold good. The idea of dread of ejectment has been imported into this country from Ireland. For in this country the practice of ejecting was foreign to the landlords. These observations strictly apply to the

times before Act X came into force Happily the habits of the people of this country are too conservative to be easily affected by legislative innovations. A thousand texts, says one of our Hindu authorities, cannot alter a fact. Thus it is, that in spite of Act X and its novel provisions, the old state of things actually subsists in the main up to the present time.

The essence of the above is, that the bulk of the land of Bengal is the subject of one uniform description of tenure which may be called the ryoti tenure, the rest of it being nij jote, or seer, or khamar land. The incidents of a ryoti tenure are, that by custom the ryot is not subject to arbitrary ejectment, and that he has to pay rent at rates not settled by competition, but at the rates which happen to prevail in the village or neighbourhood.

The first thing, therefore, that the Legislature has now to do is to recognize the above facts, and to declare the existence of ryoti tenures as unaffected by the question of the term for which possession has been held, the nij jote or khamar land being excepted from the land in respect to which such tenures would accrue.

Then comes the important question of rates. The question of rates were never settled by competition. The idea is altogether new to this country. It is an English idea, derived from the state of things existing in England. It presupposes a total absence of any customary rights belonging to the tenant. It need hardly be said that the tenants in this country have at least some sort of customary rights, if not the full rights of proprietorship. Besides, the tenantry being presumably an ignorant and imprudent body of men they could never secure the advantages of competition whatever those might be. Competition in their case means ruin and heart-rending misery, as too clearly proved by the history of Ireland. In short, considering the customary and traditional rights of Indian ryots, it would be no less unjust and illegal than unreasonable and inhuman, to think of competition with reference to them in any case whatever, however short the period of their holding might be. The present collision between the ryots and zemindars in some quarters is owing to the latter seeking to introduce the principle of competition. The ryot population is increasing, and there is an increased demand for land. The landlords are eager to take advantage of this, but even Act X does not make increased demand for land a ground for enhancement. In determining the question of rates Government should not only shut out the competition theory, but is called on positively to declare the illegality of it.

The theory of a fixed proportion of the gross produce comes in next. The old Hindu law treatises no doubt speak of a share of the gross produce as the standard of rent. But to fix a proportion of the gross produce as the invariable standard of rent can only be fair where the cost of production is stationary. When our old Legislature spoke of a share of the gross produce as due to the State, the cost of production was scarcely a matter for calculation, such was the vast area of land left uncultivated, and so varied the choice of the cultivator. But since the sixteenth century things have taken a different turn Not only has the cost of cultivation been increasing along with the value of the produce, but in most cases, owing to the fast deterioration of the soil, the increase in the cost of cultivation has outstripped that in the value of produce. In such a case a fixed share of the gross produce would be a most unreasonable system of rent. When four rupees' worth of produce was obtained by expending one rupee's worth of labour, seed, &c., one-fourth might be a reasonable proportion. But probably the same land would require at different times an expenditure of rupees two and three to yield rupees four worth of produce How could the principle of a fixed fraction of the gross produce be reasonable then? Accordingly this system was superseded by a system which would not warrant the adoption of this principle. Under the Moghul Government, rates of rent were fixed in money, going by the name of pergunnah-rates. And these rates became permanent by custom and were the prevailing rates at the time of the Permanent Settlement Fixed money-rates mean larger rights of the tenants than the gross produce principle of rent. For fixed money-rates do not leave openings for enhancement on the ground of increase of the value of produce. For instance, if the rate for first class rice-land was one rupee per bigha, and the rate for second class land twelve annas per bigha, the same rates would continue whatever might be the changes in the value of the produce, only that if any second-class land was changed into first-class land the rent would be enhanced from twelve annas to one rupee. Since the Permanent Settlement the fixed money-rates, or the pergunnah nirricks have been disturbed to some extent, owing to misconceived rules and regulations promulgated by the Government. But yet the landlords have had all along to be obedient to custom, and moderate in demands, in a greater degree by far than Act X would have them, or Government would generally suppose them to be. Enhancements of rates, strictly speaking, were seldom known before Act X. Measurements and jamabandis chiefly meant assessment of unassessed land, and the promotion or degradation of lands from one class to another, as where bastoo land had been converted into rice-land and *vice versa*, the rates being corrected accordingly But seldom were the general rates themselves changed. Latterly, however, the landlords in some cases raised the general rates too, but their proceedings were marked by three prominent features. One was that the enhancement of the rates was by very small amounts at a time, such as half an anna per rupee, or an anna per rupee, or two annas per rupee. Another feature was that it was obtained by persuasion, wheedling and coaxing, and not by forcible means; and the third feature of it was that it was often effected chiefly in indirect ways in the shape

of what are called cesses and abwabs. This conciliatory procedure even now goes on in well-managed zemindaries where the landlords have the knack of serving their interests peaceably.

The above state of things goes to suggest that the system of enhancement that the Legislature adopts should contain guarantees against sudden raising of the rent, and that it also should be placed on a basis which allows of enhancement, only where the tenant is, or should be, in a more prosperous condition than before, owing to his holding. To fix a share of the nett produce as the standard of rent is the nearest approach to such a system. Thakurain Dasi's case lays down the principle of maintaining the proportion which might have existed at a given point of time between rent and value of gross produce in all time to come. This principle is revolutionary in its tendencies. In fact it gives effect, as has been shown to some extent, to only one of two opposite forces. Agricultural produce ever tends to increased value. But the producer has to put up with another counteracting tendency. The cost of production is also ever increasing. The same causes that increase the value of produce (remarkably, among others, the increase of population) also increase the cost of the necessaries of life and raise wages. The cost of cultivation also increases owing to another patent cause, viz., the gradual deterioration and exhaustion of the soil. It is therefore exceedingly unjust to recognize and take into account the one tendency, and to ignore the other, in settling permanently the principle of rent. Nett produce represents the resultant of the two opposite forces and should therefore form the basis of calculation. In what is called the metayer system, gross produce is made the basis of calculation it is true. But then under the metayer system, the landlord, generally speaking, has at least partially to share the cost of cultivation. The principle of enhancement should be thus declared. What the rent was at the last settlement to the nett produce at that time, the amount decreeable should be to the nett produce at present. If the last settlement be alleged to have been made before ten years ago, I do not think it proper to allow the party to go longer back than ten years for the starting point of the calculation. Again, in calculating the cost of production, an allowance for risks, and for the amount of interest which the tenant as a rule has to pay to his mahajan, should, I humbly think, be included in the cost of production.

Then, as to the maximum rate of enhancement, to the necessity of which I have alluded above. This, also, should be fixed at a stated share of the nett produce and not of the gross produce. To fix the maximum at a share of the gross produce would be to introduce as unsatisfactory an element into this matter as it has been proved to be with reference to the general principle of arriving at enhanced rent.

Suppose, for instance, that the maximum is fixed at one-fourth the value of the total produce, as the Rent Commission recommends. One tenant by spending four rupees in labour, &c., on a bigha of land gets five rupees' worth of produce. The maximum rent being one and a fourth rupee in his case, trenches upon his capital, leaving him only three and three fourth rupees. Another by spending the same amount gets eight rupees worth of produce. The maximum rent in his case is two rupees, leaving him a profit of two rupees. Thus the effects of such a maximum rule would be various and arbitrary.

According to Ricardo and other political economists, as well as by common sense, rent is that which a piece of land produces in excess of the capital employed, and the reasonable profits on that capital. Now, in the case of a ryot, his capital consists of labour, seed, and wear and tear of his implements and bullocks. All these he procures himself, generally by borrowing of mahajans at an interest of 25 per cent. per season. Then, again, some allowance is to be made to him for risks of season, &c. This allowance may reasonably be put down at 25 per cent. of his capital. Should that be thought too high, fix it at a lower percentage. Thus out of the gross produce you must deduct a portion which is equivalent to the capital spent, and a percentage on account of the interest which the ryot in all probability has actually to pay, as well as a percentage an account of risks and accidents. This portion of the produce should have nothing to do with the demand of rent. It is only the balance which may roughly be defined to be an unearned gain, and to be open to a landlord's demands. In the case of competition and rackrenting, the whole of this balance goes to the landlord. But the position of a ryot in this country is certainly higher than this. Both by the Statute law and the common law of the country, a ryot is entitled to a share of this unearned gain. What that share is, is not certain. And this uncertainty is at the root of all the difficulty on the subject. The share of the ryot may be declared to be two-thirds of a maund, or half, as the Legislature deems proper. Thus the remaining share of the unearned gain should be put down as the maximum of the rent beyond which it should not be enhanced.

No doubt in determining the amount of nett produce, there is one element of difficulty in excess of what is met with in ascertaining the gross produce. But there is no reason for a landlord to complain of this difficulty. In the past those landlords only got enhanced rents who had the tact and goodness to induce the tenants amicably to agree to small increases in the rates. Landlords of the present time should be presumed to possess those qualities. Should they lack in them, and choose to haul up their tenants before the law courts, it is only reasonable that they should be content to abide by the difficulties which the necessity of things occasions.

Having said the above on the question of what should be the position of a ryot as regards the amount of rent demandable by his landlord, I would say a very few words

on the remaining two points. First, as to the question of sub-letting. Like the first question, this question, too, may well be dealt with on the basis of existing customs. These customs are, that tenants whose holdings are large often sub-let portions of their holding at contract rates, while their character as *bonâ fide* cultivators is not affected thereby. There are other cases in which even ryoti tenures passing into the hands of middle class men are sublet *in toto* by the latter to ryots similarly circumstanced as the original tenants from whom they purchased. In these cases the lessor, though nominally in the position of a cultivating ryot, virtually ceases to be so, and the lessee though nominally a *karfa* ryot, becomes virtually an ordinary cultivating ryot (generally called an occupancy ryot). In view of the above, I would humbly suggest that the law on the point may be thus declared A cultivating ryot (known as occupancy ryot) may sub-let parts of a holding. But if by the sub-letting he does not cease to be a *bonâ fide* cultivating ryot generally in respect of the holding, the lessee should not acquire ryoti (occupancy) rights. But the lessee's rights in such a case should be regulated by contract, express or implied. Where, however, a ryot sub-lets the whole of a holding, or sub-lets parts of it so as practically to surrender his position as a cultivating ryot, the lessee should acquire the rights incident to a ryoti holding.

The above goes to simplify the third point of enquiry, namely, what should be the ryot's position as regards the question of transferabi ity. If the right of sub-letting be declared to have the above effect, the reasons for shutting out mahajans and persons disagreeable to zemindars from the category of competent purchasers of ryoti tenures would cease. Yet to make the matter doubly clear it may be laid down that, whenever a sale deed of a ryoti tenure is to be registered, be it auction sale or private sale, the purchaser should make a declaration that he will either hold it as a *bonâ fide* cultivating ryot, or transfer it to such a ryot. Thus ensuring the continuity of the tenure as a ryoti tenure, the invidious distinctions disallowing mortgages and sales in execution of money decrees may well be dispensed with

In all that I have said above I have used the word ryoti tenure instead of occupancy tenure. For, as I said at the outset, I would have the distinctions of rights founded on the length of time to be done away with.

Before concluding the subject I shall intimate how I would define a ryoti tenure. Land which has been in the cultivation of a ryot for the preceding 12, or say 20 years, otherwise than as a cultivator of *nij jote*, or khamar land, is ryoti land. The tenure of a ryot holding ryoti land is a ryoti tenure. In conclusion, I would repeat that my earnestness in the matter is my excuse for addressing this note to Government.

N. T. W.—Reg. No. 11542J—132—9-2-81.

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Notes on the Report and Draft Bill of the Rent Commissioners, submitted to Government by Rajah Promothonath Roy of Dighaputtia.

Paragraph 4.

1. The Commissioners in paragraph 4 of the Report recommend the abolition of the provision about distraint of crops (section 68, Act VIII (B. C.) of 1869). I do not see how this can be done without making the just dues of several of the landlords irrecoverable at times, specially in such parts of the country as North Rajshahye or South-West Bogra, where I know there is a greater demand for tenants than for lands, and where, therefore, even the occupancy jotes are not always much valued by the tenants.

The majority of the landlords in these parts, whenever they have heavy arrears to realize, first have recourse to distraint now, and if from the sale of the crops they cannot get all their dues satisfied, they bring a suit for realization of the rents and ejectment: and even then they cannot in all cases realize their entire dues with the price of the crops and the *nuzzur* the jote fetches them by re-letting.

A large portion of the ryots in these places, and those who cultivate boro lands in others, are pykhast non-occupancy tenants, who come from distant parts of the country. These ryots take lands at the beginning of the season, and after the crop is harvested, they pay their rents, take away the crops, and throw up their jummas. Now the whole year's rent, according to custom, in all such annual holdings, becomes due after the crop is reaped: so no convenient interval is left to bring a rent suit and distrain the crop on the force of a Civil Court order after the time the rents fall due and before these ryots can carry off the crops to their distant homes. Distraint in these cases is the means now almost always employed, and that it has not yet been found to injure anybody is proved by the fact that the landlords have very seldom been obliged to ask the Civil Court to sell these crops, nor have the tenants been obliged to ask for the protection of the Court against their landlords.

Paragraphs 51 and 22, sections 9 and 11.

2. I cannot see the necessity, even after reading paragraph 19, of creating a new class of tenure-holders by transferring to this, from the ryot class, such people as possess in one jote more than one hundred bighas of land. The zemindars, I know, do not want this new creation, and even such of the tenants whom this provision is intended to promote to a superior class cannot, as far as I can judge, care much for it. The holdings of more than one hundred bighas in a single demise are almost all of them ryoti jotes which have been acquired once for all, or from time to time, by the ryots' families for agricultural purposes; and these are not at all difficult to prove. Therefore, according to the High Court decision in the case of *Karulal Tagore* vs. *Luchmiput Dugar* (7 W. R., 15) the present occupants have no fear of being arbitrarily turned out by their landlords, because of their having let out the jotes to sub-lessees. Their rents are now enhanceable, and they will remain the same after the change in their status. For these reasons their promotion will not bring them any material advantages in these two respects, while it will certainly put some of them to the disadvantage of being always liable to pay to their landlords according to the rule recommended by the Commissioners—a 70 per cent. of their gross receipts, minus collection charges, and often more. These big jotedars are generally friendly now to their landlords, and that is the reason why the holdings have been allowed to grow so big; and therefore for past and present services to their landlords almost all of them have prodhani-hajotes granted to them. Some of these hajotes, tokens of the landlord's kindness, are so big that they reduce the jumma sometimes to 50 per cent. of the receipts of these ryots from their sub-tenants. This proposed provision is also objectionable, on the ground that it will, on account of our laws of succession, very frequently change the status of a ryot's family, and with it the mode of enhancement of the lands held by the family—a thing which cannot be very much liked by a rest-loving nation like ours. If the Commissioners have recommended this provision from a fear that some of these big jotedars who have sublet their lands entirely might some day be considered as middlemen by a Civil Court, let the Government get the term middlemen abolished; for after the wording of section 6 of Act VIII (B.C.) of 1869, as has been explained by the High Court, the existence of the term "middlemen" seems to me rather anomalous.

The only advantage of this proposed creation is, as far as I see, that on the failure of heirs the lands will escheat to Government, and not to the landlords as they do now. This escheat cannot be a very great source of gain to Government: besides, I do not see why Government should look for gain by depriving the landlord of one of his vested rights.

Paragraph 30 (3), section 19, explanation 3 (C).

3. I object to the conferring of the right of occupancy to sub-ryots holding under occupancy ryots. The custom of considering the *karfas* (sub-ryots) as mere tenants-at-will still exists, as has been acknowledged in the Government letter to the Board of Revenue, paragraph 7, in spite of the High Court's decision in the case *Gourhari Singh* vs. *Behari ryot* (12 W. R., 278). Therefore this recommendation of the Commissioners, to confirm the case law by statute, is considered, and very properly too, a new creation.

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The arguments against this new creation from a ryot's point of view I leave to the advocates of the ryots; and I believe it will do a material injury to the landlords, by putting difficulties in the way of amicable enhancements, and by giving them an impoverished, and therefore very likely, a discontented tenantry.

Paragraph 32, section 20 (A), (B).

4. The subject of the saleability of the occupancy right has been before the public, and discussed, as I believe very fully, during a period of nearly two years. Since even after hearing all the arguments against this measure the Government has decided to confer this right, I think it is useless to bring objections against this decision.

Among the arguments which have been used there were a few which showed that the saleability of the occupancy right, if conferred without restrictions, would be injurious to the landlords, by enabling hostile zemindars to buy up for purposes of harassment and often dispossession, and injurious to the ryots, by enabling the mahajuns to purchase the holdings. The Select Committee on Mr. Mackenzie's Bill for the speedy realization of rent, acknowledged the soundness of these arguments, and provided, as far as possible, against these difficulties.

But in the section as recommended by the Commissioners, though measures have been taken to prevent the mahajuns buying up the holdings at a small price, there is nothing to provide against the first difficulty—namely, a hostile landlord buying up occupancy jotes. Mr. Field in page 176 of his *Digest*, advises landlords to evade this difficulty by themselves purchasing the holdings. Now it is very well known how scattered Bengal zemindaries are, what a short-sighted and lazy man an ordinary zemindari gomashta is, and how quietly private negotiations and sales can be managed. Under these circumstances, even if a zemindar were disposed, and could afford to prevent hostile people taking in his lands by purchasing them himself, perhaps in 90 per cent. of the cases he would not know of the sales of holdings within his estate before the deeds of sale were registered.

Paragraph 34, section 20 (E).

5. Contracts should be made binding on the ryot just as strongly as upon the landlord or other people, otherwise business is sure to come to a dead lock. If a ryot has bound himself to do certain things, or to go out of the holding, and if afterwards he do not perform the works he is expected by his contract to perform, I think it is only fair justice for a Court to make the ryot either perform the contract within a reasonable time, or give up the holding. I cannot see why in this latter case he should be entitled to compensation from the landlord, unless that is also provided for in the terms of the contract.

A tenant contracts to see that the boundaries of his holding, which is situated on the borders of his landlord's estate, are preserved as of old, and to go out of the holding if he allows a neighbouring landlord to encroach upon it. The landlord of the tenant who allows such encroachment asks the Court for his ejectment on account of the breach of his contract to preserve the boundary intact: the tenant does not try to do it within the time allowed him by the Court. Under these circumstances, will it be fair to oblige the landlord to pay compensation to this tenant? The landlord, to retrieve the mischief done by the tenant, will most likely have to undergo a good deal of trouble and expense, if he can at all retrieve it, while the tenant must have got his price from the hostile zemindar who has been benefited.

Paragraph 54, section 22, explanation (C) of ground 2 of enhancement - *i. e.* on account of the quantity of land being on measurement found to be greater than previously.

6. The Commissioners propose that a ryot's rent should not be liable to an increase on this, the second ground, if the holding be not bounded on one side at least by a jungle, water-sheet, or some such other unculturable plot which, when reclaimed, the ryot might have added to his holding.

I cannot too strongly protest against this recommendation of the Commissioners. No reasonable man can doubt, when a plot measured 37 bighas in 1860, and was found, when measured by the same standard—haths and poles or chains in 1880—to contain 45 bighas, that either the ryot has since added his neighbour's lands to his holding, or paid at the last jarip the landlord's amin handsomely to under-measure the plot, and thereby to betray the trust of his master and commit a fraud. I would humbly beg the Government to consider, in a case like this, whether the ryot deserves a punishment or a grant of a rent-free holding of eight bigahs for either stealing quietly his neighbour's lands or abetting a fraud.

Paragraphs 52 to 83, sections 22 to 24, and 95 to 105.

7. They treat of the manner according to which rents of occupancy holdings shall be enhanced, and therefore they form the most important part of the draft Bill.

The statute and case laws now in force for regulating enhancement have been deemed unworkable by all; and the tenants having understood their advantage, refuse to consent to an amicable resettlement of their jummas, which would give the landlords anything like a fair share in the increased income of the land. An amended law for making fair enhancements possible has therefore been demanded by the landlord class for some time, and specially after the breaking out of the late agrarian disturbances. What, therefore, the landlord wants, is a law which should tell him and his tenants as distinctly as possible the amount of rent which would very likely be decreed by a Court if the landlord be obliged to go up to it for the enforcement of his claims. If a ryot paying now a jumma of Rs. 50 can know for certain that if his landlord sued him for an enhancement, the Court would fix his rent at between Rs 70 and Rs. 80, he would amicably arrange with his rent-receiver to pay an increase of Rs. 22 or Rs. 25 upon his old jumma: the landlord too would think himself very lucky to get this increase without the bother and expense of a law suit. But if the tenants understood that, by contesting the standards of measurement, the

prevailing nirrick (rent-rate), the time when the landlord says it was last fixed, the price rates of the marts nearest his house, and taking advantage of all other defensive positions which the law gives him, he might as likely evade a fair enhancement according to the new law as he could under Act VIII (B. C.) of 1869, he would in almost all cases prefer to take the risks of the litigation rather than pay even an enhancement of Rs. 15, though he knows that if the landlord succeeded at last in proving his case, the Court would very likely fix the jumma at Rs. 95 or Rs. 100.

I find that in the draft Bill, except embodying the High Court Full Bench ruling in Thakurani Dasi's case, and making a few verbal alterations, the enhancement sections have been left as they are in the law now in force.

The Commissioners in the 63rd paragraph of their report have recommended to do away with notices of enhancement in the months of Pous and Jaista, and to substitute in their places the institution of suits for enhancements a month earlier. The land-holding interest do not consider this such a great boon to them as the Commissioners do; for though they will not be required to prove the service of notices, they will still have to prove the service of summonses. Now it is very generally believed, and I venture to add very properly too, that the Judge, to avoid for a year at least the difficulty and bother of going through the intricacies of the material grounds of an enhancement suit, takes advantage of the discretionary power he has got to disbelieve the evidence of the notice-serving peon and nishandar (identifier), and dismisses the suit on technical grounds. A Judge so disposed will have equal facilities of deferring for some time the trial of the suit on technical grounds, by exercising his discretion again, and disbelieving the peon serving the summons and the nishandar, even if the recommendation of the Commissioners be accepted by the Government.

The recommendation of the Commissioners, for making enhancement suits on the ground of the increase of prices of produce, triable by the Collector alone, and on the other grounds, by either the Collector or the Civil Court, just as the landlord likes, unless he is an ijaradar with a lease of less than ten years yet to run, is not also considered by the zemindars as of any very material advantage to them. I admit that a table of enhanced rates, prepared by the Collector and sanctioned by the higher Revenue authorities, as proposed by the Commissioners, and the ascertainment of the area of land which shall comprise a bigha or pakhi would in most cases make further proceedings in Court, in an enhancement suit, unnecessary. But according to the rules proposed in the draft Bill and explained in the Commissioners' Report, the Collector to be able to draw out a fairly enhanced table of rates must be satisfied as to the existing rates, the time when they were last fixed, or whether they were fixed at the time alleged by the zemindar, and the prices of grains at that time. Now such landlords as might be lucky enough to possess registered kabuliyats taken at the last jummabundi, or subsequently, and which kabuliyats distinctly state the standards by which the lands were measured, the rate of rent agreed upon, and the time when the last jummabundi took place, will be able to supply the Collector with all he wants, except the price rates at the last jummabundi time. But the number of landlords who possess kabuliyats executed and registered by the tenants is very few, so in most cases the Collector will have to deal with the chitta, paitha, and jummabundi papers of the landlord's sherista, and these papers are notorious as badly kept. Therefore the Collector or the Civil Court is sure to hesitate to accept them as correct or genuine if impeached by the other party. I need scarcely add here that when people go to Court against one another, and begin to abide by the counsels of petty muktears, they do think it any great vice to challenge evidence, and call it, and even try to show it, as false, which evidence they fully know to be true. Nobody knows better than experienced Government officers how badly kept and almost worthless the 20-year old papers of a zemindar's sherista ordinarily are, and how impossible it is to find the truth out of them at any but a time when both the landlord and his tenants are friendly, and everybody desirous of fishing out, instead of compounding, the truth. I therefore cannot see how such experienced gentlemen and Government officers as the Rent Commission was composed of, could recommend to base the Collector's table of rent-rates on these old sherista papers, when the parties have begun to fight in earnest.

It might not be very difficult for the executive authorities in future to keep approximate price-lists of the different hâts and bazars, but I cannot see how such price-lists of past times could be got, as no party in the suit would dare impeach with any show of reason Most of the jummabundis according to which tenants are paying rents now were made some years ago, before the prices of grains rose high all on a sudden, since when they have not vacillated to any great extent.

The fact is, and I believe it is well known to Government, that many of the landlords, after seeing their share of the income in the land very much reduced by the sudden rise, wanted to enhance rents; and when they found that neither the ryots would consent to fair enhancements amicably, nor could they get them in any other fair and straightforward way, a few of the landlords resorted to unfair means, and the agrarian disturbances were the consequence. Need I say that since the disturbances fair amicable enhancements have become an impossibility. Generally the present rent bears the same ratio to the gross income from the land as it bore after the rise of prices; but some 18 or 20 years ago it bore a much larger proportion. Therefore what the landlords demand now, and to get which they have been supplicating the Government during the last six or seven years, is not the proportion of the gross income of the land they got after the prices rose, but something like what they used to get before that time—in other words, they want a higher percentage of the income from the land than

they get now. But they cannot get their rents enhanced under the rules proposed by the Commissioners, unless they can get a Collector or a Moonsiff with very strong sympathies for the zemindar class to try their cases. Our legislators of 1859, by creating, or, as some people like to call it, re-establishing the right of occupancy, have made the tenants co-sharers in the lands with their landlords. But while securing this share in the proprietary right for the tenant, they omitted to determine what that share should be, and the result is that unless the landlord is unscrupulous and able enough to coerce his tenantry, he cannot get his fair share in the land materially acknowleged by them. This state of things must continue, and future agrarian disturbances, perhaps of a more virulent type than the last, must remain possible till the legislature fixes once for all the shares of these two fighting proprietors in the same land definitely, and not in the way proposed by the Rent Commissioners.

The Commissioners propose to give to the zemindar or the ryot the whole increment if the productive power of the land, or the price of the produce, has increased by his sole agency or expense, and the increment to be divided equally between them if effected without the agency or expense of either of them. By way of illustration of the latter case, the Commissioners have shown, at the end of paragraph 76 of their report, how this increment is to be divided between the landlord and the ryot. To prove the increase of the productive power, necessitating a comparison of the present amount of produce with that of the same land in past years, would be very difficult, if not impossible, and therefore, in my opinion, no sensible party would base his case on this precarious ground. The increase in the price of the produce will consequently be the only material ground upon which people would like to base their cases. Though I cannot see how a ryot can manage to raise the price of the produce, surely nobody can object to the principle of the increment being awarded to the party who raised it by his labour and expense. But I certainly object to the method by which the Commissioners propose to divide the increment, if raised by general causes and without the agency of the landlord and the tenant. They say that if the price is doubled, a bigha of land which paid a rent of Rs. 1-8 should pay Rs. 2-4 For argument's sake, assuming the land to produce amun paddy, and sixteen maunds of it (a not extraordinary produce of a bigha in this district), the price of each maund to be six annas at the last jummabundi time and twelve annas at the time when the landlord wants to raise the jumma. I see the income of the land raised by Rs. 6, out of which the zemindar is to get only two annas, or one-eighth of the net increment. Now I humbly beg the Government to consider whether this is a fair award to the proprietor of the land.

Under these circumstances I venture to suggest that, to make an enhancement law workable, our legislators must once for all definitely fix the shares of the two classes in the land, whether it be the same all over the country, or particular shares for particular and defined tracts, and thus remedy the mistake their predecessors committed in 1859; and then to carry out enhancement on this principle as approximately as possible, make the Collector, assisted by a committee, consisting of the District Judge, the Sub-Judge, and moderate non-officials, appointed from time to time by Government in equal numbers from zemindars and tenants, or men sympathising with them, prepare and get sanctioned by the higher Revenue authorities, every five years or so, a table of rates for the different classes of land in the several portions of the district to be fixed by Government on account of the similarity in their agricultural state.

The principal objections which can be raised against the mode of enhancement on the principle of shares I have taken the liberty to suggest, if, say, the landlord's share in the gross produce of the land be fixed at one-fourth, are that in cases where the landlord's present share has already attained or exceeded that proportion, no further enhancement will be possible; and where the tenants now enjoy more than three-fourths of the income from the land, their rents might be raised very high all at once. Now the Commissioners have already proposed, and I think reasonably, to disallow enhancement above a fourth of the gross produce; and I think that the protection proposed to be given to the ryots in cases of enhancement on account of the increase of the rent-rate—namely, that the enhanced jumma should not exceed the double of the old jumma, if extended also to enhancements on the ground that the holding is found by the present jarip to contain a larger area than what it was put down for at the last jarip,—will be sufficient to prevent any extraordinary and sudden increase in the rent, which might tell very hard upon the tenants. My proposal, therefore, is that the rents for particular and defined tracts of the country be fixed at particular shares, determined from time to time, or definitely, by the Lieutenant-Governor at the recommendation of the Board of Revenue, of the gross produce of the soil, taken at an average of say three unexceptional years. That the enhanced jumma thus fixed should remain unaltered for ten years, unless for diluvion, and that it should not on any account be more than double of the old jumma. This mode would obviate the difficulty, if not the impossibility, of fishing out of the old sherista of any particular zemindar in dispute with his tenants the old rate of rent and the standard of measurement. The suggestions made above are very much the same as recommended by the Commissioners, only with this difference that the rent-rate tables will be prepared on a defined principle, in a peaceful instead of a troubled time, and for a whole defined tract, consisting of several estates, instead of one particular estate. With regard to this proposal, a question might be raised as to who is to pay the costs of inquiry necessary to enable the Collector or the Committee to prepare the tables. My answer to it is that, as this is a matter in which the whole people of the province are concerned, for they are all either ryots or landlords, the Government ought to pay them; or

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to pay them first and recoup themselves afterwards. I would here beg to mention that this proposal is not an unprecedented one: it is merely the revival of the old system of the Government declaring pergunnah rates on a defined principle, only the tracts having similar agricultural advantages are to re-defined, and called by name whatever it be.

If this proposal be fortunate enough to be accepted by Government, and on the landlords applying to the Collector or to the Civil Court to measure their lands for them with a view to enhancement, the Court shall, in case they deposit the probable costs of the jarip, and the tenants cannot show that the adjustment then in force took place within the last nine years, order a Sub-Deputy Collector, a Canoongoe, or a Court amin to measure the lands and prepare a chitta (field-book) for the whole mehal. Both landlords and tenants, knowing approximately what the jumma would be fixed at under these processes, would sooner come to an amicable settlement than quarrel and pay the costs of an expensive litigation.

Also, according to a method like this, there will be no necessity for saddling the Collector with the decision of individual cases, and the dead lock which some people fear in the executive work of a district on account of this additional work, which the recommendation of the Commissioners will bring on his already full hands, will be evaded.

Paragraph 61, section 23*b*.

8. The same reasons which induced the Commissioners to fix the double of the old rent as the maximum in enhancements on the 1st, 3rd, and 4th grounds exist also in the 2nd. I cannot therefore see why on this ground the rents should be allowed to be raised to more than double. This maximum is fixed to enable the ryot to meet the enhancement with some convenience, so I do not see the necessity of a rule for a progressive enhancement.

I cannot understand why the jumma of a holding, after it is once fixed, should be altered within ten years on account of alluvion, for the tenant has nothing to do with lands beyond the boundary of his holding, for which he paid rent.

Paragraph 59, section 23*c*.

9. I do not object to the protection proposed to be given to special crops for a certain number of years till those crops become staple ones, but I think the legislature should fix the number of seasons necessary to make any special crop to be considered a staple one for the locality. This will obviate the necessity of the Revenue authorities determining and publishing from time to time a list of the staple crops—a no light work.

Paragraph 168, Chapter 4, sections 26 to 31.

10. The Commissioners propose by these sections to create a new class of ryots, to whom they want in some respects to give more advantages than even the occupancy ryots possess. A land speculator goes to a landlord and rents from him in the lowlands 200 bigahs at one rupee a bigah, the prevailing rates in the mehal for lands of the same class being fourteen annas a bigha, and sets to excavate tanks, cut irrigation channels, and do a lot of other works according to his own idea of land improvement, though the nature of the soil does not at all need them. After four or five years he finds out his mistake and sees that the money spent has been clearly wasted. According to section 31 he has only to go to the landlord and say that his rents must be reduced to one anna a bigah, and the landlord must either suffer a heavy loss in his annual income, or pay down the money the man has himself lost by his mad speculations.

The class for whose benefit these sections have been framed is not at all an important or a numerous one, and therefore this new creation cannot make any very great difference in the material well-being of the country, which alone can, I humbly beg to submit, justify the infringement of existing rights.

Besides, a person who wants to make money by agricultural pursuits, and wishes, before he has occupied his lands for twelve years, or soon after he has entered them, to begin with constructions or excavations of such costly works as would make his farm yield more than his neighbours' ones, always takes leases from his landlord which his children or other successors shall inherit, or which shall have all the advantages of the right of occupancy immediately after the lease is executed and the lands taken possession of. Such a person therefore is sufficiently protected even now. If, however, Government should think it desirable, for the interests of the country, to extend this protection to people who have not taken this precaution, by conferring the occupancy right upon ryots of less than twelve years' standing, it will not harm the landlords if the right of occupancy be extended to a ryot who has settled in an estate, built his homestead, and remained there permanently with his family for three years or more, exception being made in favour of chur lands or long uncultivated lands, regarding which, as well as regarding pykhast ryots, the law should remain as now, and Chapter IV should be omitted.

Section 40.

11. The Commissioners propose to limit the time to two years within which a landlord must either serve a notice on the tenant beginning to misuse his land, or lose his right for ever. Though such cases of misuse are not expected frequently to occur, at least in the districts of which I have any experience, I object to it on account of the principle involved Bengal estates, and especially big ones, are well known to be very incompact and scattered all over the country, so that one person is often found to own property in lands in four, five, six, or even more districts, and many of these mehals are so small that the landlord cannot afford to appoint men to look after them who shall be beyond reach of a bribe. The consequence is, that matters which it is the interest of some well-to-do tenant to hide, do not come very soon to the landlord's knowledge. For this reason if the legislature do not wish to see section 37 remain a dead-letter, it should limit the time to at least twelve instead of two years. A tenant who

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misuses the land let to him without the express sanction of the landlord, and thereby tries to defraud the landlord of his just dues, is certainly a wrongdoer, and, as such, he should receive less consideration at the hands of the legislators than the landlord whom he tries to harm.

Paragraphs 11 and 113, sections 40 and 41.

12. The Commissioners recommend to extend the right of occupancy to homestead and such other lands as are used for building purposes, and to provide that, in enhancement suits, either the first ground for enhancement in cultivated lands should be observed, or the rent should be fixed at one-twentieth of its market value.

The High Court rulings have already given occupancy right to the honestead lands of an agricultural ryot, and so this extension will only effect (1) the non-agricultural ryots living in a village or a town, and (2) the shop-keepers.

Class (1) consists of fishermen, washermen, milkmen, &c., who are seldom even now molested. I would therefore not object to the extension of the right of occupancy, which the Commissioners have humanely recommended, to their homestead lands, if they have occupied and paid rents for them for twelve years or more. Ordinarily these people pay rents at the same rate which is paid by agricultural ryots for their bastu (homestead) lands, and as in this part of the country at least purely non-agricultural villages do not exist, nobody can reasonably object if the legislature fix the rates payable by them at the same amount as is paid by the agricultural ryots of the village for their homestead lands.

The Commissioners' recommendation, about fixing the rate of this class of land at one-twentieth of its market value, is very likely based on the present market value of zemindaries or permanent tenures, which are now generally believed to fetch twenty years' purchase. The two cases are not at all analogous, for when a whole lot of people will go in for a zemindary or a tenure, none but a fisherman would care to buy a plot in a fisherman's quarter in order to build his house there, though he (the fisherman) might at times pay more than a twenty years' purchase for the plot, none other would care to go in for it at all.

But I must strongly object to the extension of the occupancy right to class (2). Anybody who has experience of the way by which a rival landlord tries to set up a rival hât or bazar, knows very well that threats and enticements are the principal means used, and they are very liberally used to induce shop-keepers to go to the new place in preference to the old one. The starter of the new market cannot work his plans out better than by getting a footing in the old one; and as his rival is always on the watch to prevent his coming in contact with the frequenters of the old bazar, he is very often obliged now to send out his people to the old hât in different disguises. If, however, the occupancy right, which is also going to be made saleable, be extended to this class of lands, a rich starter of a new hât will be materially assisted, inasmuch as he will be able to ruin the old one and establish his own with a fourth of the sum he is now obliged to spend to gain his purpose, if he can at all now gain his purpose. An ordinary village bazar generally consists of half-a-dozen permanent shops, one or two of which are kept up by people who themselves own their capital. These are often termed golas, and there are a couple of dozen or more of daily attending shop-keepers, who for the most part deal in fish, vegetables, and live-stock. The permanent shops, and specially the golas, are used by the landlord to bring in the others, and therefore, unless they are friendly to the landlord, the bazar will be ruined in no time. Now, if the Commissioners' proposal be passed into law, the owner of the new bazar will very easily be able to buy up one or two of these permanent shops; and after his new hât is established and the old one ruined, say in six months, to give up the land.

Paragraph 126, section 61.

13. Anybody properly acquainted with the practices in mofussil courts ought to know very well that this recommendation of the Commissioners, not to serve notices of deposit of rent on landlords as formerly, within the first fifteen days, but instead to stick up in the Court a list of such deposits, and after the first fortnight is over, to serve the notices at the cost of the landlords, will result in obliging the landlords to pay either a private fee to the Court amlah for information of deposits of rent in their favour, or for the service of notices. As rents are often deposited in small amounts, any of these expenses would go hard against these people, and who knows whether this extra expense in some of the cases might not exceed the amount of money he is to get by its means.

As the money is to be deposited at the Collectorate, the notice might very conveniently, and without anybody suffering in his purse, be served through the agency of the police. I therefore beg the Government to serve notices of deposit either through the police or in the old way, but not to throw the costs on the head of the landlords afflicted with refractory tenants.

Paragraph 137, section 69.

14. The Commissioners propose that a single sharer in a joint undivided estate shall not have the power to bring a suit for the recovery of rent against any of his tenants, unless the other sharers collude with him and prevent him from paying the rents, or unless the Court permit him to make the other shareholders *pro-forma* defendants.

Now A, B, and C might be co-sharers in an undivided estate. A has applied for a butwara, and the suit is pending, B and C might be scamps and negligent of their own interests, and therefore, without colluding with the ryots, they might not join A in the rent suits; or C having died without issue, his property might be the subject of litigation,

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and therefore there might be nobody to join A in the rent-recovery suit on behalf of C. According to the recommendation of the Commissioners, unless the Court permits him to make B, and the person who has possession of the estate on behalf of C, *pro-forma* defendants, A must either make a false declaration of collusion or remain without receiving rents, if the tenants, or any of them, should choose not to pay up amicably.

For these reasons I must strongly object to this proposal of the Commissioners, unless the permission of the Court to make the other co-sharers *pro-forma* defendants be done away with.

Paragraphs 139 and 140, section 76.

15. I do not see the necessity, in an amended rent law, to revive the old difficulty about settling the standards of measurement by which a certain mehal used to be measured before. According to the mode proposed by the Commissioners for getting individual jummabandis or tables of rates for particular estates made by the Collector, the measurement by a chain forty yards long, with the rate fixed at Rs. 1-8 a bigha, or by one eighty yards long, assessed at Rs. 6 a bigha, would make no difference whatsoever to either the landlord or the tenants; nor would the length of the chain make any difference, if the enhancement be conducted on the principle of shares in the gross produce of the land.

Paragraph 141, section 77.

16. The Commissioners propose to allow the ryots to cut down all sorts of trees on the land which were planted by themselves, or people from whom they have inherited or purchased the holding, leaving aside the fact that jack, mango, and such others which yield valuable wood, are now the property of the landlords by custom, with a usufructuary right for the ryots, and therefore cannot be given away by Government without taking them from the landlords. This recommendation, if accepted by the legislature, would throw upon the head of a landlord the not very small costs of clearing the lands of the roots of trees felled by the ryots who sell the valuable wood and run way. I must therefore object to this proposal.

Paragraph 142, section 78.

17. On an estate or tenure being sold at auction, the Commissioners propose to save a tenant's liability to the purchaser for rents due after the sale if paid to the former proprietor, in case the purchaser, for whatever reason it might be, do not give to the ryots notice of the purchase.

Now A is a proprietor of an estate which was sold at auction to satisfy a decree on the 2nd January 1879: B purchased it. A tried and failed to get the sale cancelled, but on that account B did not get the confirmation of the sale till the 23rd February 1880. B consequently had to pay the Government revenue of the five kists between the dates of the sale and the confirmation; while, disdaining to make false statements, he could not conscientiously tell the ryots all this time that he was the rightful proprietor of the estate; A, who has no other property besides what is sold, had in the meantime, in collusion with the ryots, been taking some money from them, on the grant of dakhilas for a larger amount. I beg the Government to consider whether, in a case like this, the recommendation of the Commissioners would be at all fair to B.

Before the sale there was a kurok (distraint) of A's right and title in the estate, and if the tenants chose to pay him before that distraint was removed, they ought to be made to take the risks of such payments, and, to save them from having to pay interest for arrears of rent in such cases, the law provides for deposit of rent with the Collector. Under these circumstances I cannot see the necessity of this section for the protection of the tenants.

Paragraph 84, sections 112 to 114

18. The recommendation of the Commissioners for proceedings to obtain a settlement jummabundi, is certainly a very kind one for a newcomer to an estate the tenants of which do not like to have him. But if my proposal for enhancement of rents and that for jarips, with a view to it, were accepted by Government, I humbly think there would be no further necessity for this.

A newcomer not being expected to know when the last jummabundi took place, can always apply for a jarip with a view to enhancement, and then the tenants individually must either show satisfactorily the standard of measurement, the area and classes of land of each holding, and the rate of rent for each class of which their jummas were fixed nine years ago or less, or the Courts shall order the measurement to be made, and to the jummabundi after that jarip there can be no difficulty if my proposal be accepted.

Section 210.

19. The time of one year, which the Commissioners propose to allow the auction-purchaser of a landed property to annul all voidable incumbrances upon the property created by the former proprietor, is exceedingly small, and therefore, in my opinion, it should be extended to at least three years.

J. A. R.—Reg. No. 11543J—132—9-2-92

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To—The Honorable Sir Ashley Eden, K.C.S.I., Lieutenant-Governor of Bengal.

The humble memorial of landholders of the district of Monghyr, most respectfully showeth.

1. That your memorialists have perused with the deepest concern the new Rent Bill, and as the Bill is to be passed by their Government, and they having got permission and liberty to lay their grievances against the Bill in question, beg most respectfully to represent the following few objections for Your Honor's favorable consideration.

2. That the right of occupancy which a cultivating ryot has got, agreeably to section 6, Act VIII of 1869, is very injurious to the zemindar. Some ryots being dissatisfied, and with a view to injure the zemindar, cultivate nugdee tenure, and keep the bhawli tenure in an uncultivated state, and under the present Bill they having got the right of occupancy in three years would not pay the rent due to the zemindar, appropriate the produce, transfer the right of occupancy to some other person, and create another right in another mouzah. Such a procedure being followed would affect the cultivation and realization of rent

3. That agreeably to section 68, Act VIII of 1869, the zemindar was authorized to attach the property of his ryots for the realization of rent due, and immediately on the attachment of the ryots' property, the rent was realized without any difficulty; and it is worthy of Your Honor's consideration that, under the present Bill, there is no other alternative left than recourse to the Civil Court; and when, under the present Bill, the cultivating ryot is authorized to transfer his tenure to another person, the rent due to the zemindar cannot be realized. Under these circumstances it cannot be understood what benefit the Government thinks a zemindar would derive.

4. That the Members of the Commission state that the bhawli system proposed by them is similar to that of England; but in England it is a rule that the zemindar pays half and half to the ryot for plough-cattle, and in some places for seed, and in many cases builds houses for the ryots. But in Behar a ryot does not get anything besides the land; the whole cost of cultivation rests with the ryots, who get even less than half of the produce. Your memorialists most respectfully beg to state that to make the English law applicable to the zemindars of Behar is most ruinous to them, as your memorialists are loyal subjects of Her Most Gracious Majesty their Empress, and owe their maintenance and respect before Government only to their zemindary. Your memorialists of this district agree with the members of the Patna Landholders' Association, who have memorialized Government, that the zemindars, for increase of the productive powers of the lands, cause at their own cost, wells to be dug, tanks to be excavated for the ryots to irrigate their fields, and appoint guards for water for the ryots, and build houses for their new ryots.

5. That the Members of the Commission are of opinion that the ryots should not pay more than half to the zemindar for bhawli tenures. Your memorialists humbly state that under the danabundi system the ryots get more than half the produce, as when the zemindar's amla during danabundee fixes the produce of a land at 20 maunds a bigha the zemindar thereby gets 10 maunds only, whereas for the benefit of the ryot, with the permission of his zemindar, he lowers down his valuation and the ryot thereby gets 15 or 16 maunds a bigha more than the zemindar's share. In spite of this the Members of the Commission state that the ryots get nothing except the land; that is due to their want of knowledge on the subject The zemindar always cares for the welfare of his ryots.

6. It is worthy of Your Honor's consideration that your memorialists do never seek for the badness of their ryots, inasmuch as when they let out their zemindary in mostajeri, they enter stipulations in the pattah to the effect that the mostajir should devise means to increase the productive powers of the land with satisfaction and pleasure of the ryots, and not to oppress the ryots, and other conditions for their welfare and prosperity.

The Members of the Commission have considered quite contrary to this.

7. That from time immemorial the landlord and tenant have been connected by friendship with each other, the tenant giving assistance to his landlord in every matter, and the landlord treating him in like manner, and this friendship was daily towards the increase; now the new Rent Bill being passed would put a stop to this friendly connection, and create new sorts of feuds and hatred between the landlord and the tenant.

8. That your memorialists cannot understand why their Government is acting against the promise held out to them during the Permanent Settlement that their rights would always be protected; that agreeably to the above promise they always bow down to the order of Government with much expense by payment of Road and Public Works Cesses and subscriptions for Schools, Hospital, and other public purposes required from them. Your memorialists pay these for the sake of their above right protected by their gracious Government in their zemindary; if not, they can establish their own charitable institutions by construction of mosques, imambaras, mandirs, dharumsalas, &c. That if their case be taken into consideration it would come to light in what difficulties they have been placed, being required to account for all criminal occurrences in their zemindaries. That when Government pays no regard to the welfare of your memorialists they would be at last put to shame by their ryots, and would seek for redress at the hands of their gracious Government.

10. That your memorialists agreeing to the objections raised by the Behar Landholders' Association, presided over by the Maharajah of Durbhunga at Bankipore, in the memorial submitted to Government for consideration, pray that Your Honor will be pleased to take their case into your favourable consideration.

And your memorialists, in duty bound, shall ever pray.

Signed by 54 zemindars

Dated the 25th December 1880.

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N. T. W.—[illegible] No. 11541J—132—[illegible]

No. 1381, dated Hooghly, the 5th October 1880.

From—R. Cornish, Esq., Offg. Collector of Hooghly,

To—The Commissioner of the Burdwan Division.

In reply to your No 28T (Circular), dated 6th ultimo, I have the honor to submit the following report on the Rent Bill.

2. As the time given has been very short, I have endeavoured to ascertain and record chiefly the views and interests of the ryots, leaving the zemindars to speak for themselves as in the accompanying report of Baboo Joykissen Mookerjee.

3. *Chapter I.*—The provisions of this chapter will probably affect this district less than many others.

We have no classes resembling the jotedars of Rungpore, or howaladars of Eastern Bengal.

I agree with the distinction drawn by the Commissioners between tenure-holders and ryots, but I should add that it seems generally unpopular; all classes agree in calling the distinction new and arbitrary, both as regards the limit of land and the incidents of occupancy and enhancement.

Were we legislating for this district only, the limit of the ryotwari jumma should be 50 beeghas. This would include 99-100 of our ryots, and would be a concession to the zemindars in return for the many demands made on behalf of the ryot in the Bill. Here I would make one suggestion, namely, that provision be made for securing a ryot against loss, if what has been treated as a ryot's holding of say 99 beeghas turn out on measurement to be 101 beeghas. I am not sure if the Bill provides for this.

4. *Chapter II.*—No remark.

5. *Chapters III and IV.*—The rates for occupancy and non-occupancy ryots seem to differ little in this district. As regards the proposal to confer a right of occupancy on the sub-tenants of mukarraridars and istemrardars, I believe there is no good reason why it should not be done; but the case is different with respect to the sub-tenants of occupancy ryots.

To give them occupancy rights would tend to efface the wholesome and deep-rooted conception of the ryot as the person bound to provide the rajkor or raj-bhag.

Our efforts should be directed to strengthening and ascertaining the position and privileges of this class, to giving them the strictest occupancy right, protecting them on the one hand against the zemindar or tenure-holder above, and on the other hand against the korfa or sub-tenant below.

What we want is simplicity, and therefore the fewer classes we recognize the better.

I would make the ryot, and not some one lower in the scale, our unit; by so doing we enhance the value and prestige of the ryot's position, and carry the people with us in laying the foundation of a wise and lasting settlement of the land question. I would leave the relation of tenure-holders towards their zemindars, and of sub-tenants towards their ryots, as far as possible to contract; but I would never let contract interfere between the ryot and his zemindar as regards the acquisition of occupany rights.

I would assume that these occupany rights are an immemorial, inalienable appanage of the ryots' status which the law recognizes, but did not create, and which therefore the law cannot allow to be lost by statutory contract. The relation of zemindar and tenure-holder, of ryot and korfa, are to a great extent the creation of the written law, and may be regulated by contract.

6. *Section* 20—This deals with a most important question, and I find that the provisions of the Bill are unpopular with all classes.

A few zemindars excepted, there is a general consensus that an occupany right should be transferable in its entirety by inheritance, sale, or gift as recognized by the Commission; but all object, and I think fairly, to the provision that it shall not be saleable in execution of any decree except for its own arrears. The object of this provision apparently is to protect the ryot against the mahajun; as an alternative it is suggested that the mahajun be not allowed to bid.

7. Still stronger objection is brought against the provision that an occupancy right may not be mortgaged.

It is said (and there is much force in the statement) that a ryot forbidden to mortgage will be forced to sell at a disadvantage, and for an inadequate price, to meet any sudden emergency, such as a sradh or a wedding.

It is suggested that all that is required is to protect the ryot's holding from falling into the hands of the mahajun for a nominal consideration by foreclosure. This might be prevented by forcing the mahajun to sue on the mortgage, and have the holding sold in execution of decree (as proposed in section 6), and by the insertion of the words "by way of conditional sale" after the word "mortgage" in clause (*d*).

8. *Clause e.*—I would allow no ejectment but by decree of court.

9. *Section* 21.—No remark. Payment in kind to the zemindar is not usual in this district.

10. *Sections* 22-23.—It is quite impossible to suggest any enhancement rules or procedure that would be at once fair to the zemindar and acceptable to the ryot.

11. *Chapter IV.*—I would strike out this chapter altogether, and either give all ryots holding for three years the occupancy right, or leave matters just as they are.

The working of this chapter will cause intense bitterness, and for the present I think it will be simpler and better merely to secure the position of the 12-year ryots in their occupancy rights.

12. *Chapter V.*—No remark.

13. *Chapter VI.*—A most important chapter in this district.

Section 41.—I would make this retrospective by omission of the words "after the commencement of this Act."

It is most necessary to encourage all classes to build good houses; the cultivator is protected as far as regards his dwelling-house with, I presume, granaries, cow-houses, &c. Certain castes, such as blacksmiths, weavers, and carpenters, should be protected as regards their workshops. There may be ryots carrying on their special trade in addition to their agriculture.

14. *Chapters VII and VIII.*—No remark.

15. *Chapter IX, Section* 55.—No distinct provision is made for payment of rent as a deposit in advance.

Section 58.—Much objection is raised to the necessity of tender before deposit. This will lead to wholesale perjury.

It is also suggested by many that deposits might be made by Post-office orders payable to the zemindar or his agent.

16. *Chapter X.*—No remark.

17. *Chapter XI.*—Section 77 has greatly alarmed the zemindars, and will no doubt be carefully reconsidered.

18. *Chapter XV.*—As far as I can gather, the general feeling is that the revenue officers are the proper authorities to decide these cases when the dispute is bitter or widespread, and that the Collector or Deputy Collector should in such cases pay a personal visit to the spot and really dispose of the matter locally.

Considering how little license such officers have, people would prefer leaving ordinary or isolated cases to be settled by the civil court.

19. I regret that I have no time or knowledge to criticise this chapter (XVIII).

The Draft Rent Bill.

Before I proceed to make comments on the various sections of the Draft Bill, I beg leave to observe that it has caused considerable alarm among the entire body of landholders. It proposes to destroy their vested rights, to introduce changes in the present law which are quite uncalled for, to restrict or annihilate customary rights which have received the sanction of the highest Judicial authorities, and to complicate the relations of the different classes connected with the land in a way which, instead of fostering good feeling between them, will force them to court for the adjudication of questions which are now settled amicably, and create dissensions where there is peace and harmony. The present body of landholders comprise persons of various occupations and professions, who have invested large capital in the purchase of landed property on the assurance that "no power will then exist in the country by which the rights vested in the landholders by the regulations can be infringed, or the value of landed property affected;" and yet it is proposed to take away some of their most valuable rights, and restrict others in a manner which will materially reduce the value of their properties. The creation of new classes of occupancy rights and tenures, the investment of new rights in ryots and tenure-holders, the abolition of the law of distraint and ejectment, and the imposition of unwarranted restrictions on the right of enhancement of rent, are changes which will virtually cause a re-distribution of property, and transfer the rights of property in the land from the landholder to the ryot. Apart from the legal and equitable view of the question, it is very doubtful whether the economic result of such a transfer would be for the good of society. The changes introduced by Act X of 1859 in the law of landlord and tenant have been declared by the highest Judicial authorities to be infringements of the rights of landholders, and I venture to assert that, whenever any suggestion has been made for a change in the law, it has been made in the interests of the landholder. The scope of the Draft Bill is therefore quite contrary to the direction in which gentlemen entrusted with the administration of the law, and who have had the best opportunities of judging the effect of legislative enactments, think it necessary the present law to be amended. In the interests of the landholders and of the agricultural community generally, I therefore submit that the Draft Rent Bill should be thoroughly remodelled before any steps are taken to pass it into law.

Sections 6 *and* 17.—The rule throwing the *onus probandi* on the landholders of proving the creation of a holding, or an alteration of rent prior to 20 years, is contrary to the rules of the permanent settlement, inequitable in principle, and opposed to sound maxims of law. It is well known that zemindaries and putni talooks frequently change hands by decrees of court, by sales in execution of decrees, as well as by sales for arrears of revenue. How can a purchaser by any one of these several descriptions of sales rebut the 20 years' presumption? The old collection and measurement papers in the possession of former proprietors or their agents are always withheld and sometimes destroyed by the connivance of ryots for a pecuniary or other consideration. The rule virtually deprives the proprietors of their just right of enhancement. The practice before the enactment of Act X of 1859

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was that the person who claimed exemption had to prove his title. It prevailed uninterruptedly more than 70 years, and it was, as far as I am aware, not on the complaint of any of the interested parties that the change was introduced. This wrong should be remedied by distinct provision in the new law.

Explanation to (6).—The injustice perpetrated upon the holders of permanently-settled estates becomes clear on reading this exception, which exempts estates not permanently-settled from the operation of the presumption. It is difficult to understand why there should be such an invidious distinction between Government khas mehals and permanently-settled estates belonging to zemindars. All the rights of Government, save the right to receive revenue, were made over at the time of the decennial settlement to the zemindar. The zemindari interest and Government interest stand therefore on a par, and there should be no distinction between the two.

Section 9.—The rule which allows a maximum profit of 30 per cent to the tenure-holder ought to be omitted. There is no reason why a tenure-holder should have 30 per cent, when the zemindar is allowed by Government a malikana of 10 per cent only.

Section 10.—This section lays down that enhancement may be given at a progressive rate, and that the enhanced rent shall not be more than double the old rent. Both the provisions are very objectionable. It is not at all a rare case to find a landholder create a tenure in the name of a relative or dependent at a low rate of jumma, as a provision for the contingency of the estate changing hands. The fraud is carried on to an extent only known by experienced persons. Not only is the lease registered, but fictitious rent-suits or partition-suits are instituted, and the *bona fides* of the tenure is thus apparently established. Suppose an estate which yields Rs. 500 is let at an annual rental of Rs. 100: if the limit of double the amount becomes law, it will be an act of grievous injustice to the sale purchaser. It may be urged that such fraudulent transactions are not intended to be covered by this section; but where is the exception? At present, even without such a pernicious provision, many such frauds are perpetrated. It can be easily imagined to what extent fraud and litigation will increase if such a law be passed.

Section 11.—This is an innovation in the wrong direction. To convert all jotedars who have been, or will be, let into possession of 100 bighas or more into tenure-holders would be an unjustifiable interference with the rights of the landholders, who alone have the right to create a middleman. A ryot, with a large family, takes a jote of 100 bighas as a future provision for his several sons and nephews: on his death these hundred bighas are divided among half a dozen persons, each of whom gets only 15 or 20 bighas. The proposed law would reckon all these men as tenure-holders, although they are ryots in every sense of the word.

Section 12.—There is no necessity for this section. Whenever land, which is partially or wholly filled with jungle, is let to a tenure-holder or ryot, he takes the precaution to secure to himself favourable terms as to rent, in consideration of the labour and expense he will have to incur in bringing the lands under cultivation. At the time of the permanent settlement some provision for jungleboory tenants was necessary, and therefore made; but now the contracting parties may well be left to themselves as to the terms of their contract.

Section 13.—The word "permanent" in this section should be defined.

CHAPTER. II.

Section 16, *Explanation*—2. The words "with the consent of the proprietor or superior tenure-holder" should be added after the words "transferred or separated from other land which formed with it a single holding," as it involves a breach of a fundamental fiscal law that a holding cannot be partitioned without the consent of the superior landholder.

Section 18.—The proposal to assess alluvial lands at a rate of rent calculated on the rate paid for the adjoining land is objectionable. Alluvial lands are more fertile, and they fetch more rent than other lands. In cases of diluvion the loss is not of a superior class of land.

Section 19.—The right of occupancy has been introduced in Act X of 1859 without taking into consideration the manifold disadvantages which such a law entailed both on the proprietor, the tenant, and his descendants. I admit that the law has very good reasons to support it, but the question is whether, by striking a balance, the advantages will preponderate. I unhesitatingly reply that they do not. In the first place, it is an encroachment on the rights enjoyed by landholders from the time of the permanent settlement, which provided that he was to let his lands to the best advantage with certain restrictions regarding the khoodkhast ryots occupying lands 12 years prior to the decennial settlement. The Regulation VIII of 1793, section 60, provided that landholders were not to let their lands for more than ten years. As the Regulations of 1793 laid the basis of settlement of lands not only between the Government and the zemindar, but also between the zemindar and the ryots, this restriction clearly indicates the intention and spirit of the Legislature of the time. Such a restriction goes a great way towards stopping future improvements in agriculture. Before this innovation was introduced, a zemindar exercised a right of taking away lands from indolent and extravagant ryots, or such as persistently declined to cultivate new crops, and letting them to more industrious persons; or when it was found that a jote of fifteen bighas or so was divided and sub-divided among the numerous sons of a ryot into small patches, he interfered and gave the lands to one or two thrifty members of the family. If a bigah or two of land interfered with the ploughing of a jotedar's lands, the same was made over to him in the interests of cultivation. If a ryot wanted to dig a tank for which he required half

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a bigah of his neighbour's lands to make the tank one of a respectable size, or the same necessity arose for the purpose of cutting a water-channel, there was no obstacle to the improvements being effected.

The extension of a right of occupancy to the majority of ryots is therefore detrimental to the interests alike of the zemindars and ryots The great evil that underlies our system of agriculture is the splitting of jotes into small fragments under the operation of the Hindu and Mahomedan law of inheritance. Among the Hindus the division of lands is confined to male children only ; but among the Mahomedans, the wife, the sister, the mother, the daughter or daughter's sons are all recognized legal heirs, and the division is therefore infinitesimal. A great deal of litigation, misunderstanding, and quarrel follows almost invariably when lands are so divided. Formerly the zemindar exercised his right of giving the lands to one or two of the descendants of a dead ryot. What has been the effect of the creation of rights of occupancy? Suppose a ryot's father held 20 bigahs of land in different fields of the village; it is divided among six sons, so that about three bigahs and a half falls to the share of each. These three and a half bigahs are comprised of eight or ten plots in two or three fields, distant from each other. The consequence generally is that these small fragments are cultivated at a great disadvantage, and with much waste of labour and money. It might be urged that a holding cannot be split without the consent of a zemindar; but this provision goes little way to remove the evil. In the zemindar's sherista a jote may remain recorded in the name of two or three persons jointly, but practically these lands in many instances are divided among several occupants. Instead of removing this most grievous evil, it will be augmented if rights of occupancy be further extended, and the rights of landholders curtailed. What is urgently required to ameliorate the condition of the tenantry, to improve agriculture, and to increase the prosperity of the people, is to make a law restricting the divisions of holdings below 15 bighas. If there be three or four shareholders, one of them may be appointed a manager for the rest, or the lands may be givem to the eldest member of the family, and compensation given to the other members in the shape of value of their shares. If they cannot agree among themselves, the matter can be adjusted by a punchayet to be appointed by the Moonsif of the district on a summary application.

(*b.*) Whatever may be said or thought by ignorant and inexperienced persons, the interests of zemindars and ryots are blended together. It is not the interest of the zemindar to eject a ryot from his jote as long as he pays his rents regularly and does not obstruct the improvement of the estate to the detriment of his neighbours or his landlord. If Government were to appoint a commission consisting of two Deputy Collectors and three intelligent landholders, with a Civilian of long-standing in the service as their president, to go about the country and collect information as to how many ryots have been arbitrarily ejected from their jotes, and how many villages have been rack-rented during the last 20 years, the result will at once indicate to our rulers the course which legislation should take in the matter of landlords and ryots.

(*c.*) I believe the intention of the law-makers of 1859 was to grant the right of occupancy to actual cultivators ; but the word "held" has been interpreted to extend it to other than actual cultivators. Now, a person who is not himself a cultivator generally takes lands to let them to cultivators at an exorbitant rent, and enjoys the difference of rent as a middleman. I would therefore earnestly propose that no new occupancy right be created hereafter, all those possessing the right at present should be maintained. The change that the Rent Commission has proposed to introduce in the shape of a provision for the transferability of ryotee holdings with the consent of zemindars will in the end prove most mischievous both to landholders and their ryots. The evils of this change are so well stated in the minute of the learned Chief Justice, and of several other official and non-official persons, that I need not repeat them here.

(*d.*) This is one of the extreme measures proposed by the Bill. It provides that, when a ryot is ejected for non-payment of rent or for breach of conditions, he shall be entitled to compensation for improvements made under sections 29 and 30. This novel provision will increase a large amount of litigation. The ryot almost in every instance will be advised by mukhtears and pleaders to put in a claim for compensation, which must be adjusted after a tedious judicial investigation, and every intelligent person knows what a judicial investigation means in this country. Half a dozen witnesses on each side must be examined. Not unfrequently a civil court ameen will be deputed to the locality, and perhaps an appeal will be preferred against the Moonsif's decision. All this will cost both the parties a large sum of money, and the landholders will in many instances forego the right of ejectment. These provisions will perhaps increase the stamp revenue, but the litigations will so much impoverish both the ryots and zemindars, that the ultimate result, even in that respect, is doubtful. But what are the improvements generally made in their jotes by this class of ryots? Simply nil. The natural fertility of the soil in this country is such that a little scratching by the plough produces abundant crops with little or no manure. Our ryots do not make irrigation tanks or watercourses at their expense. When a wealthy ryot wishes to dig a tank, he always provides himself with a *sanad* or mukarrari pottah from the zemindar. It is the zemindars who excavate irrigation tanks and watercourses, and erect embankments. There are no hedges in our fields. When a ryot makes a fruit garden, he is put to little or no expense. He has only to gather a few mango or jack stones which he sows on the land: then where is the expense incurred by the ryots?

Section 21.—The restriction to 50 per cent of the produce is an interference with the conditions of contracts entered into between the parties. Sometimes a whole village is more

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fertile than an adjacent village. Now, these contracts are made on the basis of the nature of the soil. In some cases ryots willingly and even greedily contract to pay 60 per cent of staple crops, and for bad or sterile lands they would not contract for 40 per cent. Why then hamper these mutual agreements by uncalled for legislative interference? Leave the parties to themselves, they understand the interest of each other much better than the legislators.

Section 22, Illustration (*c*).—This illustration is very objectionable. In well-cultivated villages, and even in towns, khamar poteet lands abound, and wherever a ryot or householder requires some land to add to his jote for bastoo, he takes a plot sometimes with the knowledge of the landholder, sometimes with the connivance of village gomastas, and not unfrequently by gradual encroachments without the permission of anybody. A few cottahs of poteet lands lying close to a cultivated piece are gradually and imperceptibly taken, and usually the boundary line is no bar to such fraudulent practice, as it is easily removed to cover the encroachments. I repeat that there are waste and poteet lands in well-cultivated as well as less cultivated villages, and that boundaries are easily shifted. Are the zemindars to be deprived of the increase thus fraudulently made by the jotedars, and for no earthly reason? If such a novel provision be made into law, it would open a wide door to fraud, and enable ryots and lakhrajdars to increase the area of their lands at the sacrifice of the landholders. Without the aid of such a provision, the ryots and lakhrajdars frequently play many a trick. Even the ryots encroach upon public roads. Many zemindars live at a distance from their estates, and even those that reside in any of the villages of their estates, there are numerous villages from which they are absent. The ryots and lakhrajdars are incessantly playing these tricks, and, when found out by a gomasta, he is sometimes rewarded with a fee for his non-interference. It is only by general measurement that the frauds are brought to light. Are the persons implicated in these frauds to be allowed to perpetuate the wrong and robbery, because one may say why not make your gomasta responsible for these wrongful acts? The zemindars do so now and then, when they have positive proof of the delinquency of the gomasta. But how seldom can they get such proofs. Again, if a Collector's amlah were to connive in a khas mehal at such frauds, is Government deprived of its lands because the gomasta was a rogue? The ryots will perpetually, under the encouragement held out in this section, make the plea of having lost their lands with defined areas, and our courts are always willing to lend a favourable ear to such pleas. The result will be the zemindar will gradually lose his lands.

(*c*).—This innovation is also based on imperfect information. A lease given with certain boundaries is frequently made the basis of covering other lands than what is described within the boundaries. Whenever a fraud is to be committed on the landholder, two or more ryots, who have lands near each other, frequently combine together, and a portion of their lands is smuggled within the boundaries of the leaseholder. The other ryots afterwards apply to the zemindar for the reduction of jumma on the reduced quantity of land in their possession. The intervening *ails* are easily capable of removal. Again, within inhabited villages there are frequently plots of waste lands; these are easily amalgamated sometimes with the mofussil amlah's combination, and the zemindar becomes only acquainted with the fraud on the change of amlahs. For all these and many other cogent reasons, whenever a zemindar finds out these encroachments on his rights, he should have his remedy by suit in court. This wholesome provision is necessary for the protection of the zemindar's rights, and he should not be deprived of the same for a theoretical idea.

The provision that the enhanced rent should not be more than double the previous rent may be further proved to be unreasonable. The silt that is deposited by the overflow of rivers very often converts sterile lands into fertile plains. A field which grows only inferior paddy may thus suddenly become very fertile. The former rate was perhaps Re. 1 per bigha; but now tobacco, jute, superior classes of vegetables, and other crops are produced, and the land becomes capable of paying a rent of from Rs 5 to Rs. 8 a bigha, leaving a large profit to the ryot. Will a ryot's jumma under these circumstances be increased from Rs 10 to Rs. 20 only, when it is capable of easily bearing a rental of Rs. 50 or Rs. 60 a year? It may be urged that such an extraordinary fertility is owing to natural causes; therefore the difference should be divided between the ryot and the zemindar. Such a division would be a grievous wrong to the landholder, because the zemindar who gains an increase of rental from these lands may have at a little distance from them another field, which becomes covered with thick sand. The ryots who held it have simply to file a petition of relinquishment, and the loss is entirely the zemindar's Either you must provide that the fertilized land would have to be given up by the ryot if he does not agree to give Rs. 50 or Rs. 60, or compel him to take those 20 bighas deteriorated by sand at its former rental of Rs. 80. The latter proposition is of course prepostorous. The only remarkable way of getting out of the difficulty would be to let the zemindar have his rights on the one hand, and losses on the other.

II. In a given tract of land only paddy was produced before. By village washings and other causes the zemindar finds that sugarcane or potatoes or jute can now be cultivated on those lands. One of these staple crops is introduced and cultivated on this area. It fetched only a rental of Rs. 1-8 per bigha, say for 15 bighas Rs. 22-8. By the introduction of sugarcane, &c., according to the current rate of the village, the rent of 15 bighas would be Rs. 75. Will the landholder be restricted in this case also to receive double the amount of the former rent, *i.e.* Rs. 45 instead of Rs. 75? Remember that this cultivation of superior crops has not cost the cultivator any outlay in changing the character of the land, but the value of the produce will be more than treble the former value.

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Section 23. (*a*).—This is an encroachment on the zemindar's right of enhancement. A landlord should have the full benefit of the improvement of his land by natural causes. The ryot is not a co-proprietor with the landlord, and should not therefore share the benefit in equal proportions with him.

(*b*).—These additions in (*b*) should be modified. How is a court to strike an average of certain number of years when the fertilizing silt is deposited upon the land within a year or two? The land bore before a rental of Re. 1 per bigha. From the deposit of the silt it will give Rs. 7 or Rs. 8 per bigha. If the average has to be struck from the outturn of seven or eight years, the zemindar will be a grievous loser by it. He is entitled to have the increase from the first year. These illustrations will only mislead the Judges, and give a loophole to fraud.

(*c*).—After laying down rules in the preceding sections for the enhancement of ryotee holdings, there is no necessity for providing that the increase shall not exceed one-fourth or three-tenths of the value of the produce. The Bill provides that enhancements shall take place on the four grounds mentioned in section 22; but the restrictions which the Bill imposes on this right are neither to be found in the Regulations of 1793, Regulation V of 1812, Act X of 1859, or Act VIII of 1869. There were some difficulties in the determination of enhancement suits under the two latter Acts, and the zemindars and judges were both of opinion that those difficulties should be removed; but instead of removing them, fresh difficulties are thrown in the way to such an extent as to destroy completely the right of enhancement. The zemindars, as proprietors of the soil, have a clear right to collect a fair rent for the lands they have let to their ryots, and no legislation can deprive them of this right unless the ruling power make up its mind to destroy the said engagement entered into with the landholders in 1793. It cannot be denied that the country owes not a little of its prosperity to the landholders. They have planted villages in every part of the country by giving money to new ryots to build their huts, by digging irrigation and drinking-water tanks, by cutting khals, and by giving rent-free lands to village blacksmiths, carpenters, and making other arrangements for new villages. If an enquiry be made, the enormous amount laid out by the landholders in the improvement of their estates would become apparent. The zemindars did all this chiefly with a view to secure an increase of rent-roll of their estates. Now, if Government were to deny them the fruits of their industry and of their capital, it is but fair and equitable that an adequate compensation should be given them. While the zemindars are to be deprived of the benefits of increasing prosperity, they are doomed to suffer by adverse circumstances. Whole villages are sometimes covered with sands by floods and rendered unculturable. Villages are deserted in consequence of ravages by epidemic and endemic diseases, or washed away by rivers. Some are deserted in consequence of the oppression and exaction of troops and camp followers on their march from place to place. Rivers and watercourses silt up, and turn good arable lands into wastes. How are the landholders to be recompensed for all these losses? Heretofore losses and gains in some degree counteracted each other. What remedy does the Rent Commission propose for such cases?

The limitation as to the value of share of produce imposed by this clause will stop enhancement of rent in some districts. It is well known that 40 per cent and more of value of the produce represent the rent in several places. This provision ignores existing and well-ascertained facts, and would work grievous injustice to the landholders.

(*d*).—This gradual system of enhancement is attempted to be introduced for the first time. No one has asked for it, and no grounds are assigned for this innovation. When an enhancement is provided for, to be made upon the average production of several years, where is the necessity of this provision, unless it be to put additional obstacles to enhancement of rent?

(*e*) *Illustration.*—Deductions on account of road cess from the jumma is a novel principle. A zemindar is made to pay his share of road cess according to the amount of his rent-roll. The portion he is required to collect and hand over to Government is to be interfered with by the section. The road cess was fixed according to the supposed profit of the landholder and the ryot. Why then is the zemindar to make a deduction on his dues from the ryots.

Section 24.—The words "the ryot should not be allowed to relinquish his jote within the stipulated period" should be added to this section.

Section 25—*Ground I.*—This provision is objectionable. When a ryot has taken a jote of a certain number of bighas lying within a certain boundary, he should not be allowed to ask for an abatement on the ground of the lands being found less by measurement. The ryot has the right of relinquishing his jote whenever he likes—a privilege of which no corresponding right is enjoyed by the landholder.

Sections 26 *to* 31.—These sections introduce further complications in the letting and relinquishing of lands occupied for less than twelve years. The Legislature of 1859, in contravention of all previous precedents and legal rights of landholders, enacted the 12 years' occupancy clause. Why a landholder should not at his pleasure be able to evict a ryot who has taken land only three or four years ago, it is tantamount to saying that a ryot has only to cast a look on a plot of land and it immediately becomes his. The zemindar will not be able to re-enter upon his own lands, even if he intended to cultivate the same with better crops, or to let them to a more intelligent ryot. He will not be able to do the same without giving a compensation of one year's rent, and compensation for alleged improvements. The Rent Commission has not at all taken into consideration what a wide field of

litigation, chicanery and fraud will be opened by this provision. Then, again, the ryots will build a hut at a cost of Rs. 4 or Rs. 5, but will claim Rs. 20 or Rs. 25 for the same; and how is even a very conscientious Moonsif to come to a correct decision on such a point? He will not be able to look at these huts himself, and will have to depend chiefly on the report of civil court ameens, who are generally known to be corrupt. And as the Moonsif's decision up to Rs. 50 will not be open to appeal, the zemindar will be mulcted in every instance in which he will make an attempt to exercise his right. By far the safer course will be for him to see his rights annihilated than to make this dangerous experiment.

CHAPTER V.

Sections 33 *to* 35.—The meaning of these sections is not very clear. It is meant that, if a ryot takes land for a year or two, but goes on cultivating the lands after that time, he cannot be ousted without serving a notice through the civil court. Three years' occupancy makes a pucca ryot, as expressed by the Commission in section 26. What other classes of ryots are meant by this section? If the ryot takes land for two years, and there be some delay in re-letting those lands to another, the ryot will be entitled to bring a suit for possession. What a mass of litigation and contention this opening will afford to village mooktears.

CHAPTER VI.

Sections 36 *to* 42.—As the provisions of the proposed law will apply both retrospectively and prospectively, I do not see the scope and object of so many sections and provisions in this chapter. The practice heretofore has been for a ryot, who wishes to become a resident ryot in a village, to take a certain quantity of culturable lands, and a plot according to the wants of his family, say 10 or 12 cottahs, to build a house on, and also a small piece of waste land for *udbastoo;* and in cases of our well-to-do ryots also a quantity of land for digging a tank. The rent of these different classes of lands are regulated by some such scale as the following :—

		Rs.			Rs.	A.	P.
Bastoo land	10 cottahs	at 10 per bigha ..		...	5	0	0
Udbastoo land	5 „	„ 5	ditto ...	...	1	4	0
For digging a tank,	1 bigha	„ 2	ditto ...	...	2	0	0
Soona land	2 bighas	„ 3	ditto ...	...	6	0	0
Salee or paddy lands,	8 „	„ 2	ditto ...	...	16	0	0
			Total	...	30	4	0

Thus a ryot's holding is fixed at Rs. 30-4 per annum. Sometimes, but very rarely, when portions of the land have lain fallow for several years, a *russud* or deduction is made from the rent for a year or two.

If a ryot subsequently by the increase of his family, or other adequate reasons, intends to extend the area of his dwelling-house or cow-house, he applies to the gomasta of the village, who, after obtaining his master's sanction, lets the ryot an additional quantity of land, and the ryot pays an increase to his former jumma, and a few rupees given as *salamy.* The interest of both the parties concerned is consulted. The zemindar gets an increase of rent, and the ryot gets an additional accommodation. This procedure relates to the building of *kuncha* houses. When a ryot accumulates a little money, his natural desire is to make a pucca house, and he applies to the gomasta or the zemindar, and offers a reasonable sum for permission to erect a brick house, and sometimes pays an additional rupee or two to his jumma. Again, when a rich ryot wishes to dig a tank of the size of one or two bighas, he generally pays from Rs. 10 to Rs. 100 *salamy,* and obtains a mukarrari pottah on a very small jumma, say about a rupee, for the whole tank. Thus these simple transactions are managed by the self-interest of the parties without much ado, and the intervention of either the mukhtears, pleaders, or judges. Self-interest is the far better guide to go by in this as well as in other countries. It is by such arrangements that every part of the country has been covered with decent *kuncha* and pucca houses, and even with large and comfortable buildings without the aid of the legislature and civil court. Our old legislators had a good insight into the habits and lives of the people, and therefore allowed them to settle the matters themselves.

CHAPTER VII.

Sections 43 *to* 45.—The present law and practice are that, when an estate or tenure is sold for arrears of revenue or rent, the purchaser gets possession of the estate or tenure free of all incumbrances created by the late incumbent. The zemindar or tenure-holder sometimes makes such purchases of tenures and under-tenures, but he exercises all the privileges and rights which the law attaches to purchases of tenure for their own default. If a putnidar allowed any portion of the estate to be dispossessed by a neighbour without making a complaint within the time stipulated by law, or let a quantity of land to a farmer for 50 or 60 years, or to a ryot at a small jumma for a period of 20 or 30

years, or made a lakhraj grant, all these transactions are no bar to the superior landholder asserting his rights. Sometimes the zemindars and tenure-holders keep these purchases separate, enjoying all the privileges stated above.

Private sale purchasers, or purchasers under a civil court decree, purchase the property with all the incumbrances.

Such being the law and practice from 1793, any deviation from these rules will be flagrant injustice to both landholders, defaulters, and purchasers. The properties will fetch a small value, and the purchasers will find themselves clogged in every step they may take for the enjoyment of their purchase. This chapter should be left out altogether.

CHAPTER VIII.

Sections 46 *to* 52. *On Transfer.*—When the zemindar or tenure-holder does not register the names of transferrees by succession and inheritance within three months, the transferree is directed to apply to the civil court to enforce such registry. No time is fixed for such application. It should be provided that the application must be made within the month after the expiration of three months, or else a transferree will quietly wait several months till he finds the zemindar in self-defence had let the lands to others, and when the new ryot commences cultivation, will make a flaming application to the civil court for registry, distress and damages for real or pretended grievances.

If out of several persons who have registered their names, some die, and no notice of the fact is given to the zemindar, one of the living comes forward when the zemindar sues the parties for arrears of rent and objects that the plaint is intentionally wrong and defective, that two persons are dead, and that still their names are inserted in the plaint as living. These frauds should be put a stop to by providing that a decree shall be made against the persons then living and for laches of their own the descendants of dead persons should not be able to prevent the execution of the decree.

CHAPTER IX.

Section 56.—After the words "up to the date of decree that may be passed therefor at the rate of 12 per centum per annum" should be added "to the date of realization at the same rate," because, if such a provision be omitted, the civil court will naturally infer that no interest shall run after that date. If the rate of interest be made discretionary with the courts, they not unfrequently will award interest at the rate of 4, 5, or 6 per cent, which will be a direct encouragement to withhold payment as long as possible.

Section 57, *Clause* (*b*).—As the preceding clause provides that a ryot making a payment of rent is entitled to receive a receipt without delay, I do not see the necessity of supplying every tenant with a statement of accounts at the close of every year, and of keeping a counterpart of the same in the zemindar's sherista. This will entail additional expense and labour. The receipt for every payment is, or ought to be, quite sufficient for all purposes of future accounts. In many villages there are more than 100 holdings, and in some more than 500 or 1,000 holdings. It will be apparent that this task is not an easy one. Such an account is to be found in the *thoka* of every mehal to which all the ryots have access when necessary. By this new provision a gomasta will have to write out a statement besides his *thoka*.

Section 59, *Clause B.*—A separate application should be made for each holding, because it is not unusual for the ryot to create confusion and suspicion by insisting that the several holdings either in his name or that of his relatives or neighbours should be registered together. If separate application be made, the landholder can deal with each jumma separately, either admitting or refusing registration for adequate reasons.

Section 61. (*a*, *b*).—It is very easy to ordain that a notice shall "forthwith" be posted in a conspicuous place of the office by the receiving officer. It is well known that the subordinate officers do not care a pin for writing out or posting such a notice. Even notices for collectorate or putni sale are frequently neglected, as has been proved in many judicial proceedings. How can private individuals expect a better treatment than what is accorded in the case of Government itself. Under the present system, when a deposit is made in a Moonsif's court, notice of such deposit is not issued for months together. The High Court found the negligence and irregularities in Moonsif's courts in the issue of summonses to defendants, and the Court was constrained to issue circular orders that the day of trial should be fixed 14 days after the summonses are received by the parties. Some such stringent provisions are necessary in cases of rent deposits, to obviate the inconvenience and loss sustained under the present procedure. It will suffice if a rule be enacted to the effect that the notice of deposit should be served on the proprietor or his gomasta, or posted at the usual mál cutcherry within 10 days from the date of deposit; and in the latter case the receipt of the village mundul or chowkidar should be filed by the serving peon. It is worse than useless to depend upon the affidavit of the serving peon that he has performed his duties. Recently the conduct of serving peons, with reference to the service of drainage notices, was brought prominently to the notice of Government. Several hundreds of persons lost the opportunity of objecting to the assessment fixed by a Drainage Commission simply by the laches of the peons. It is therefore earnestly hoped that the Legislature will provide the suggested remedy, and thereby remove a complaint very generally made.

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It would be wrong to inflict upon the zemindars the cost of serving these processes. They already suffer much inconvenience and loss from not receiving their rents in due time, and they are made to pay extra charges for getting out the deposits from the public office, the universal custom among the amlahs being not to give out any money until they get some fee. The heads of offices are overwhelmed with business, and therefore little disposed to receive and redress petty complaints from the mukhtears of zemindars. Sometimes the heads of departments insist that every such complaint should be made on stamped paper of eight annas, and be verified. When all these things are taken into consideration, the necessity for a remedy will at once be accorded. It should be borne in mind that the zemindars have not at present to bear the cost of the service of notice.

It is most unreasonable to expect that the zemindar should be always on the look-out to find out from the notice posted by the public officer as to how many of his ryots have deposited rents due to him, when he resides at a distance of perhaps 20 miles or more, and his estate is situated at a similar distance. Few zemindars keep a mukhtear permanently at every sub-divisional officer's court, and it is easy to suppose to what trouble and expense a landholder will be subjected by the new procedure.

Section 62.—A civil court cannot partition the land for holdings among the different co-partners, if any of the interested parties object to such partition on legal grounds. Apart from that objection, there are manifold objections to sections 63, 65, 66, 67, 68, 69, and 70. If the collection of rent by co-partners be objectionable in some points, the remedial measures proposed in those sections will make them worse. The subject of appointing managers in ijmali estates was taken up by the Bengal Government some years ago, and after full discussion from various points of view, the attempt was abandoned. It is true there are evils in the management of joint estates as there are in many other things, but the remedies hitherto proposed were found to be susceptible of greater evil. The present practice of selling putni estates according to the share of each proprietor, even so low as two annas, has prevailed from 1819 to the present time without any inconvenience or trouble to any parties. Why should not the practice continue? *Thirdly.* A co-partner who has held his shares separately, or will succeed by inheritance, &c., to a share of the estate, should have the power of enhancement and ejectment. In these cases, to avoid future contention, the other co-partners might be made *pro formâ* parties to the suit. *Fourthly.* Rent suits against ryots by a co-partner who has held his share separately and has collected the rents accordingly for a number of years, appear to be unobjectionable, and ought not to be clogged with a provision for making his co-partners *pro formâ* plaintiffs and defendants. *Fifthly.* When a ryot has been paying separately his share of rent to certain co-partners, and jointly to others, he should deposit his rents separately in a similar manner. There can be no objection to his depositing separately the money due to each of such bodies when he has been paying them separately for a number of years. To allow him to amalgamate the names of all such parties and their several payments in a single application will confuse the matter to an extent little thought of by our legislators.

Section 64 —Not only tenures and under-tenures and holdings should be hypothecated for the arrears of rent due thereon, but the crops growing on the lands comprised in the holdings should also be hypothecated.

CHAPTER XI.

Section 72(*a*).—The wording of this clause is not very clear. Is it intended to mean that, when the rent of a quantity of land is fixed by mutual agreement and written engagements exchanged, ryots will have the liberty to insinuate thereafter that the jumma so fixed includes an abwab or cess not warranted by law, though not so mentioned in the lease. It would be abundantly clear if an investigation were made that cesses are never mixed up with the jumma.

Section 75 (1).—There is no valid reason why a shareholder in a zemindari or tenure, collecting his rents separately, should be debarred from measuring the estate, unless his co-partners join with him. It is not unfrequently the case that powerful and influential shareholders combine to keep at bay a weak co-partner. Besides, such a measurement is not binding on the other co-partners. It is therefore meet that such a restriction should be omitted.

(2). The restriction as to the measurement of lands let to a ryot, on condition that the land leased out to him shall not be subjected to measurement, should be omitted. Because a ryot having taken out a lease for certain quantity of lands, may, for anything to the contrary, mix up other lands with his jote. It is necessary that, when the landlord makes such an allegation, he shall not be precluded from measuring the lands.

The restriction mentioned in clause (*b*), prohibiting the measurement of lakhraj lands situated in an estate when a general measurement is made, is objectionable. If a lakhrajdar, legally owning only five bighas of land, amalgamated a few plots with his lakhraj tenure, the fraud cannot be detected unless the whole of his lands are measured. Again, a ryot or his relative may at the time of measurement state that such a piece is his rent-free tenure without any rhyme or reason; will such a plot be exempted from measurement? Who is to determine whether such an assertion has been made fraudulently, and with a view to throw obstacles in the way of measurement? Besides, nobody's interest will be jeopardized by the general measurement of an estate. When a mehal becomes khas to Government, the entire lands of the same, from one end to the other, undergo measurement without any hindrance Why should a private landholder be debarred from exercising

a similar right, particularly as he has exercised these rights from the time of the permanent settlement?

Section 77, *clause* (*b.*)—This clause is objectionable. The recognized custom is that, when there were trees on the land before a ryot took his lease, he is not at liberty to cut down and destroy the same without the consent of the landholder. For obvious reasons such a power is necessary, otherwise, when a ryot intends to relinquish a jote, he cuts down the trees, leaving the ground in a state not culturable, except at a very heavy cost. Again, garden land always fetches from Rs. 5 to Rs. 10 a bigha, whereas a piece of *dangah* land, without any trees, can only be let at Rs. 3 or Rs. 4 a bigha. For these and other reasons the civil courts have invariably decreed damages for infringement of this custom or common law. The practice is, when a ryot wants to cut down a tree or number of trees, he applies to the landholder, who, taking all circumstances into consideration, gives authority for cutting down so many trees as do not materially alter the condition of the land, and takes a *salamy* for this permission. In not a few instances a ryot, when he takes a lease, enters into a contract by paying down a certain bonus to cut the trees at his convenience.

Section 78.—This section is liable to many objections. When a Collector advertizes to sell an estate, or a zemindar makes an application for the sale of a putni or a mukarrari tenure under the provision of Regulation VIII of 1819 for arrears of rent, istahars or notices are issued in the principal parts of such estates. The actual sale seldom takes place before the expiry of a month, and sometimes a month and a half, and even two months, from the time of the issue of the notice. The purchaser will be liable to pay the revenue or rents from the commencement of the current quarter, that is, from the beginning of Kartik or Bysack, as the case may be, reimbursing himself by collections from the tenantry. After a revenue sale, or a sale in execution of civil court decrees, a purchaser does not get a sale certificate till after the expiry of two months from the date of sale in order to allow of any objections being preferred against the confirmation of the sale. Thus an intelligent purchaser, with perseverance and expense, seldom gets a sale certificate, or is sure of his purchase, in less than three and a half months from the date of advertizement of the sale. Then, and only then, he can issue a notice to the tenantry announcing the transfer, but the ryots would very probably say, if the suggestion of the Rent Commissioners becomes law, that they have paid the rents to the late proprietor for more than a quarter. If the purchaser raises an objection to pay revenue or rent from the commencement of the quarter, in consequence of the delay made in carrying out the sale process, the Collector or the zemindar has only to say that the estate will be put up to sale if the arrears are not liquidated. Is it equity that the purchaser should pay to the Collector or the superior landlord his dues, while he is himself prevented from collecting rent from the tenantry?

Section 79, *Clause* (*iii*).—The procedure for relinquishment of holdings should be clearly stated. When a ryot intends to relinquish a jote, he should do so by an applicationto the zemindar or his agent within the 15th of Pous; on refusal, he should apply to the court to issue a notice on the zemindar. Such notice should be issued on the zemindar or his agent, or stuck up at the mál cutcherry within the end of Pous, and a kaifeut filed by the peon within the month of Pous. If such notice be not issued, and peon's return be not made within the month, such relinquishment should be inoperative. Unless such stringent rules be laid down, a zemindar will not be able to make arrangements for the tillage of lands during the spring. Under the present lax system the Deputy Collectors' or Moonsifs' amlahs neglect for months together to serve the notices on the zemindars. The consequence is, the zemindar remains ignorant of the relinquishment till the time of tillage passes by, and he loses a greater portion of the rents for a year.

(*Clause* 4).—When a tenant, in consequence of some family feuds, heavy debts to several creditors, or other reasons, removes himself to a distant village, or even goes to a different zillah, leaving his lands waste without giving notice to the landholder, he should be assisted in making provision for his next year's rent. The law and courts of justice ought to step in and help him; but the Bill provides that the landholders should wait calmly and quietly for a year in cases of non-transferable holdings, and undergo all the costs of getting a decree and sale in other cases. But who is to make good to the zemindar the loss of his one year's rent, besides the expenses of legal processes? The plan heretofore observed is that, when a landlord finds his ryot desert his holding, his lands are re-let in the cultivating season to others. A simple code appears to be that, when a zemindar finds that his tenant has absconded, he is to make an application to the Moonsif's court for sticking up a notice at a conspicuous part on the court-house, or on the land itself, to the effect that, if a ryot does not make his appearance within 15 days, and give security for one year's rent, the zemindar would be at liberty to let the land to another ryot.

Ejectment for non-payment of rent at the close of a year has been from prior to the decennial settlement one of the chief safeguards for the realization of rent (*vide* Regulation VII of 1799 and VIII of 1819). Why should this most important provision now be done away with in the case of holders of 12 years' occupancy rights? It has been decided by competent courts that that right does not carry with it exemption from ejectment for non-payment of rent, nor from the payment of rent at fair and equitable rates; therefore this clause should be omitted.

(*Clause* 9, *with explanation*).—The object of this provision is not very clear. When an estate or tenure is sold for arrears of revenue or rent, the ryot is subject to ejectment, unless he be a resident and hereditary cultivator. The words in this clause may bear a different interpretation

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Section 81.—Three years' right of occupancy is a most strange provision. The Legislature of 1859 introduced the 12 years' occupancy right. Now it is attempted to make the period still shorter. The interference with the rights of landholders should be abandoned. The landholders are proprietors of their estates. They were not for the first time created proprietors by the law of 1793. That law fixed the revenue on their estates permanently. They were in that very law regarded as proprietors of the soil. What sort of proprietors would they be if a ryot may acquire substantial rights in the land by mere three years' occupation?

Section 90. *Explanation.*—The plaintiff should also get interest when damages are awarded for default. By an early Regulation Government imposed upon zemindars a penalty of 25 per cent and interest for arrears due, without any discretion to the Collector to abate the amount. Why should different rules prevail when zemindars are plaintiffs? The rule of 25 per cent damages and interest should be made absolute, and not left to the discretion of the judicial officers, who seldom or never award damages. Again, after the case is decreed, why should interest run at 6 instead of 12 per cent per annum? The rate of interest in the mofussil is still very high, and is likely to remain so. It is usually from 12 to 24 per cent. An uniform rate of 12 per cent will not therefore be very high.

Section 91 —While the Bill awards 6 per cent interest on the amount decreed to a landholder, it has prescribed 12 per cent interest against the zemindar upon decrees obtained by a ryot.

Sections 95 *to* 132—Relate to enhancement of rent. Instead of making the procedure for enhancing rent more simple and clear than the procedure laid down in Act X of 1859, these sections have laid down rules, conditions, restrictions and procedure much more complicated than what obtains at present. These provisions are based on the supposition that enhancement suits could be best tried and settlements made by experienced Collectors instead of Moonsifs. The public also share in this impression, but then the Bill proposes to hamper the hands of the Collector with so many considerations and restrictions that he will consider this task as an infliction, and with such feeling the work will not be surely well done. The procedure should be such as may be easily understood by landholders and ryots. The procedure prescribed by Act X of 1859 was somewhat intricate, and its judicial interpretation rendered it unworkable. The transfer of rent suits to the civil court rendered matters worse. The provisions of Act X of 1859 should be simplified, and enhancement suits should be made triable by Collectors exclusively. When a Collector decides a suit, an appeal should lie direct to the District Judge as formerly. It would be extremely hard, if not unjust, to require, as the Bill does, that the ryots and zemindars should pay a portion of the salary of a Collector or Deputy Collector and his subordinates in the adjudication of suits. When suitors pay regular institution fees, they have a right to get their cases adjudged either by the Civil or Revenue Courts, and not to be burdened with portions of the salary of revenue officers. If this principle be allowed, the salaries of District Judges and Moonsifs may with equal justice be made payable by suitors. The landholders are required in the first place to deposit the money in the collectorate. Many landholders have not the means to do so. The present practice is to sue a ryot or two in a village at a trifling cost, and when the rates are fixed, other ryots generally make amicable settlements. No procedure should be introduced which would involve an overwhelming amount of expenditure disproportionate to the benefit to be obtained. As far as appeals from the decisions of Collectors to Commissioner and Board of Revenue, I think the District Judge and the High Court should be the proper appellate authorities.

Section 141, *Clause c.*—Defaulting putnidars, in order to avoid the payment of arrears, sometimes resort to the fraud of bidding at the sale through a man of straw, who pays down the 15 per cent earnest-money and disappears, never to be found again. At the second sale no other purchaser appears, and the tenure is knocked down to the zemindar as his khas purchase. The deficit has to be made good from the first purchaser: he being a man of no substance, nothing can be got out of him. It is therefore meet that the defaulting tenure-holder shall be held jointly responsible for the realization of the full amount of his debt to the zemindar.

Section 142, *Clause* (*c*).—The power of the purchaser, as stated in this section, should not be made dependent upon the restrictions and limitations proposed in this law, as those restrictions go a great way to nullify the power of enhancement and ejectment heretofore enjoyed by the auction-purchaser.

Section 143, *Clause* (*c*).—An addition should be made in this section to the effect that, if the proprietor does not grant the purchaser the order "within a reasonable time, the purchaser may, &c., &c." The provision that the purchaser shall receive from the proprietor, or have access to all the papers in his office, is generally of very little use to the purchaser, as the proprietor of a mehal, who let his estate to a putni talookdar many years ago, seldom has any other papers than the kabulyut of the defaulter. The collection and measurement papers he had at the time of creating the putni are generally destroyed by long neglect. If, however, the collection papers of thirty or forty years before sale be forthcoming, they are of very little use to the new purchaser, as the rents of the ryots have undergone many alterations and variations, consequently the purchaser requires the collection papers of the three years antecedent to the time of sale. These can only be produced by the late defaulter or defaulter's gomasta. A provision should be added that the late defaulter shall be bound to supply the purchaser with three years' collection papers, attested

by himself and his accredited gomasta, and on failure he is to be made liable for adequate damages. Without some such provision the purchaser finds himself at the mercy of the ryot, and both parties are not unfrequently compelled to have recourse to unnecessary lawsuits. It may be urged that the road cess statements will supply this want, but as the road cess papers are filed at the interval of five and sometimes ten years at the discretion of the collectorate, the defaulter alone is the party who can supply this want, and he should be obliged to do so.

Provision should be made in this chapter to the effect that, as the purchaser and his tenure are responsible to the zemindar for rent accruing from the date of the last default, he should be entitled to collect the rents from the ryots from that date, and not from the date of sale. The notice of default issued on such occasion should be reckoned sufficient warning to the ryots not to pay their rents to the defaulter, unless he can produce proof of his having liquidated the arrears.

Section 145, *Clause* (6).—The provisions of this section require some modification, as for instance, a zemindar sues a putnidar for arrears due up to the month of Ashin. The tenure is not sold in consequence of intervening holidays and other causes till the middle of Aghrayan, *i.e.*, about a month and 10 or 15 days from the time of default. Now, an undertenure-holder who, to guard his own interests, has paid the putnidar the rent of his under-tenure due up to the month of Ashin, should not lose his right to compensation for loss of his interests because the putni was sold after a month and a half from the end of Ashin; but in the way in which this section is worded, he would not be entitled to a farthing of compensation, unless he has made good to the putnidar his rents up to the date of sale. This section therefore should be modified to the effect that, if the undertenure-holder has liquidated his rents up to the kist of Ashin, his right to claim compensation should not be forfeited.

Section 146, *Clause* 4.—The Deputy Collector who may be empowered to conduct the sales as provided for in this section should be at least of ten years' standing in the service.

Sections 147-164.—In this chapter the provision for transfer of holdings and suits against and by ryots for enhancement, and suits by a number of ryots in a single plaint, and many other new provisions, have been introduced. Where it is provided that naibs and gomastas will be permitted to carry on suits under the authority and in the name of landholders, it should be provided that the said authority may be written on plain paper.

Sections 165-225.—The provisions in this chapter are full of reference to the provisions of the Civil Procedure Code; therefore, instead of making this law simpler and clearer than the provisions of Act X of 1859, it is made much more complicated. They are in many respects antagonistic to the interests of the landholder—(1) they provide for interest at 6 per cent on the decretal amount; (2) they provide that tenures and under-tenures, as well as ryotee holdings, shall be sold with incumbrances unless the purchase-money be insufficient to liquidate the whole debt; (3) copies of decisions must be obtained at the cost of the parties; (4) no appeals against decrees to the amount of Rs. 10; and (5) other appeals subject to the discretion of the appellate court.

It is a mistake to suppose that suits for balance of rent of Rs. 10 are of trifling consequence, whereas in such suits the value of property involved sometimes exceeds hundreds of rupees, and for valuable landed property, such as the rent of bastoo lands, tanks, orchards and of staple crops, therefore this limitation should be withdrawn, and the appellate court should have no discretion in rejecting or admitting appeals; but, as a matter of course, all appeals as of right should be tried on their merits, because Government claims of revenue are realized under very stringent and hard rules, the claims of zemindars for rent should not be cursorily disposed of

The rules for the service of summons upon ryot defendants should be reconsidered; many a case is dismissed and decree re-opened on the ground of non-service. If the proof of service be made dependent not only on the affidvait of the court peon, but also the attestation of two mundals or chowkidars of the village, the evil will be removed.

JOYKISSEN MOOKERJEE.

UTTURPARA,
The 4th October 1880.

C. E. G.—Reg. No. 10699J—132—22-1-81.

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No. 3570R, dated Bhagulpore, the 27th November 1880.

From—G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Board of Revenue, Lower Provinces.

Referring to your No. 659A, dated 30th July last, I have the honour to submit my report upon the draft Bill to consolidate and amend the law of landlord and tenant.

2. The reports of the district officers were forwarded to the Board with my No. 3407R, dated the 22nd ultimo. I have consulted several gentlemen residing in the division, and am indebted to them for their opinion and advice given. From amongst the replies received, I have decided to send up for the perusal of the Board that received from Baboo Soorji Narain Singh, the leading pleader here, whose sister is a large zemindar in the district. This report therefore accompanies in original.

Remarks upon the Draft Bill for Consolidating the Law of Landlord and Tenant in Bengal.

I do not propose to discuss the question as to whether or not the carrying out of the proposals embodied in the Bill will involve an infraction of the terms of the Permanent Settlement so far as the zemindari interest is concerned. The subject has been fully dealt with by certain members of the Commission, and the decision must rest with the Legislature. A perusal of the Bill leads to the conclusion that its terms are generally very favourable to the ryots. I have no objection to offer to this. I cannot help noticing, however, that increased opposition may be looked for, owing to the fact that the zemindars were led to expect that the chief, if not the only, object of fresh legislation would be to secure for them facilities for the enhancement and realization of rents. I confess, moreover, to feeling some apprehension as to the effects of the provisions of the Bill upon the mass of the ryots themselves, and through them upon the progress of the country. If fixity of tenure leading to an increase in sub-letting be the outcoming of the whole thing, will not the present stagnation of things be confirmed and enlarged? The existence of small and unimprovable holdings is an unmixed evil. In late orders regarding the large Court of Wards' estate of Chanchal, the Board have shown that the fact is recognized, for they counselled us to endeavour to increase the size of average holdings. The figures obtained for a portion of this estate, which lies in a part of the country with a vast amount of culturable waste available, are reliable and show the following results—

Occupiers of less than 5 bighas	...	...	...	7,935
Ditto of from 5 to 10 „	...	...	...	1,585
Ditto „ 10 to 20 „	...	...	...	1,198
Ditto „ 20 to 50 „	...	...	...	725
Ditto „ 50 to 100 „	...	...	...	154
Ditto of more than 100 „	...	...	...	61
				11,658

Chapter I of the Bill.

Section 8.—I do not think that the "area" gained or lost by alluvion or diluvion is always the proper standard by which to regulate increase or abatement of rent. A piece of waste land, or land paying rent in an estate which has varying rent rates, may be gained or lost: why should not provision be made for taking into account the assets where known of the land whose condition has changed?

Section 9.—The rate of 30 per cent., which will under the terms of the law generally be taken as a guide, when, as will prove to be the case in the majority of cases occurring in these parts, no customary rate can be proved, seems extravagantly high. It is equal to the full zemindar's allowance granted by Government for temporarily settled proprietary estates. As the Deputy Commissioner of the Sonthal Pergunnahs explains, village headmen have accepted engagement at the late settlement at 12½ per cent., and I remember that in the settlement of Orissa, prior to 1866, mokuddums (persons with acknowledged rights) were only allowed 15 per cent. I would certainly reduce the proposed allowance to 20 per cent. as a maximum. What is to be the basis for calculating "the gross rents" payable to the tenure-holder, supposing he has under him ryots, occupancy or otherwise, whose rents are liable to enhancement under the law, but no action has been taken by him to raise them? Can the zemindar enhance the rent of the tenure-holder upon the basis of what the rents of the ryots should be, if the tenure-holder put the law in force against them, or must he be content with the present rates, leaving the tenure-holder to pocket the difference, if he proceeds to enhance his rents after his own has been fixed for 10 years, section 10*b*.? It would probably simplify matters if the grounds of enhancement in section 22 were, so far as may be, made applicable to the tenure-holder's case. The zemindar would then obtain his rights, and the tenure-holder and his ryots would settle matters afterwards.

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Section 10.—The limitation that the enhanced rent shall not be more than double the rent previously paid is likely to lead to injustice. Mr. Reily of Chanchal mentions that there are many tenure-holders paying four annas a bigha whose ryots pay 12 annas, the rents of these last being capable of enhancement to Rs. 1-8 per bigha. It would be preferable to give an annual increase of 25 per cent. until the maximum of rent payable by the tenure-holder was reached, or even give the full increase at once, and make the period of confirmation under clause *b*, 20 years. The law, as it stands, seems likely to increase sub-infeudation. After the words "final order" in last line of clause *b*, I would add "in the court of first instance," to avoid delay in the case of protracted appeals.

Section 11.—The provisions of this section are generally objected to here, and I do not like them myself. In drafting the arbitrary rule as they have done, the Commission seem to have had in view the advisability of simplifying the complications connected with the position of a class of persons who were really tenure-holders, and the result has been a rule that fits in well enough with the conditions existing in certain districts such as Rungpore, &c. It appears, however, to be both unnecessary and a mistake to apply the system generally. Perhaps in Khurrukpore, in this division, there may be a few cases which are fitted to come under the rule, but otherwise the effect here would be purely of a disturbing character. Two classes would be exalted into privileges that they have neither sought for nor obtained, viz. (1) mustagirs or ticcadars, who, according to the common practice of the country, take villages in lease, with the term sometimes expressed and sometimes not; and (2) ryots, who, whether they may ultimately have sublet any part of their holdings or not, originally took lands, mostly dearah lands, for *bonâ fide* cultivating purposes. That these should obtain any permanent transferable right, lapsing to the State in case of failure of heirs, seems an extraordinary step. The custom will tend to increase subletting, and create a number of petty rack-renting middlemen. If the law must be passed as it stands, it should at least be made prospective, so that landlords may know what they are about. I trust, however, that, so far as general application is concerned, it may be modified. I think the remarks upon the subject given at paragraph 3*h* of Baboo Soorji Narain Singh's report (accompanying) are worthy of consideration here.

Section 12.—As the law is perfectly precise, some provision seems necessary for the case where the landlord may have supplied some capital or assistance towards the reclamation of the land.

Section 16.—The provisions of explanation 1 will have an important bearing here. Of course the proportion of crop paid as rent over large tracts is of very old standing. I do not think that the "fixed-rate" principle has ever been supposed to apply to ryots paying in kind.

Section 18.—Same remarks as in regard to section 8 above.

Chapter III of the Bill.

Section 19—*Explanation* 3, *Clause a.*—No objection can be offered to the obtaining of an occupancy right by a ryot under a mokararridar or istemrardar. This is the practice now. The some arrangement will be admissible in case of a ryot under a tenure-holder or subtenure-holder (clause *b*).

Clause c.—Most people object to the acquisition of a right of occupancy by a sub-ryot. The idea is that the existence of the double right is incompatible, while in point of fact the occupancy ryot who sublets can make no profit and virtually is eliminated. I am in favour of only having one occupancy right in the land, but I would secure this in favour of the actual cultivator. Considering what is the history of the occupancy right, and what it will become, should it be expanded under the new Act, I cannot see why the possessors of a right created but yesterday should be favoured at the expense of the actual tillers of the soil, whom we want to protect. The moment a ryot takes to subletting, he becomes an incubus as a middleman, and it is best for general progress that he should be got rid of. I would give a right of occupancy unconditionally to a sub-ryot occupying the lands of an occupancy ryot for three years, and provide that the right of the latter merged. This would check subletting, which should certainly form part of the scheme for fixity of tenure, if good is to be derived.

Explanation 4, *Clause f.*—Should be modified according to my view expressed above.

Clause h.—If it is intended to make the law effectual, ryots should not be allowed to contract themselves out of the right of occupancy. I have myself seen cases in which this has been done by persons not of the lowest class, under conditions so absolutely opposed to common sense that the Courts refused to give effect to the condition in favour of the landlord. This occurred in the Sonthal Pergunnahs.

Section 20, *Clause b.*—On the whole, I incline to make the consent of the landlord necessary in cases of private sale. It would avoid many objections, and the consent would be procured for a small consideration in all but objectionable cases.

Clause d.—I think the restrictions upon mortgages bad. Ryots must sometimes raise money. They will be driven to sale or to evasion of the terms of the law that will often cost them dearly. If the law is passed as it stands, considering the important interests involved, there should be an express saving in favour of mortgages entered into prior to passing of the Act.

Clause e.—I think this provision will prove unworkable and lead to great difficulties. From more than one source I have received assurance that in parts of the country where

fresh land is procurable, often at lower rent than an old holding, an occupancy right usually fetches less than one year's rent at sale. Mr. Reily of Chanchal gives particulars as follows. He says that, out of 32,000 holdings on the estate, 15,000 would not sell for half a year's rent, and if the three years' occupancy system is adopted, the number of these would reach 20,000. Five years ago he sold 49 jotes in execution of decree for Rs. 1,434, being Rs. 759 rent plus Rs. 675 costs. The amount realized was Rs 255, or 18 per cent. Subsequently he has always proceeded under section 52 of Act VIII of 1859, asking the Court for an order of eviction within 15 days in event of the decree not being paid up. The result has been that during the last three years, in only 26 cases instituted has the case advanced to the final stage. In all others the arrears were paid up. In these 26 cases Rs. 449, the total demand, was paid within 15 days of the date of decree. I think eviction must be provided for in cases where the arrear rents cannot be otherwise realized.

Section 21.—I have no objection to this. As against existing practice, it would take effect gradually as cases were brought to Court.

Section 22.—The wording of the "grounds" set forth herein is good and an improvement upon the old law. Leaving out of consideration for the moment the restrictions which follow and are imposed by section 23, I have little doubt that if, in practical working by the Courts, the results of cases turned out as contemplated by the law in these provisions, but little would be heard in the way of objection on the part of the zemindars to the existence or extension of occupancy rights. It is because in the matter of enhancement under the existing law experience has shown that its provisions are almost inoperative that landlords are naturally dissatisfied. The remarks made by Baboo Soorji Narain Singh upon this section are worth perusal. It would be a distinct benefit if the Courts found themselves able to give more practical effect to the provisions of section 22 of the new law than heretofore; but I fear that the actual difficulty in the way of working cases in this direction may prevent this.

Section 23, *Clause a.*—This is not complete. It should provide for cases where increase in the productive power of the land follows the joint efforts of both landlord and tenant. This would act as an encouragement to general improvement.

Clause b.—I do not see the justice of the rule that more than double the former rental shall not be allowed on enhancement. By the nature of the ground of enhancement the ryot has done nothing to enable him to enjoy more than his share of the "unearned increment:" why then should he enjoy it at the expense of the landlord? The only thing for consideration is the effect of a sudden or excessive advance of rent. This can be provided for as proposed in my remarks upon section 10.

Clause c.—The percentage should be raised to at least 30 per cent.

Clause e.—I cannot see the justice of this rule: any improvements carried out by the road cess funds have been paid for by the zemindar as well as the ryot.

The effect of the restrictions imposed by section 23 will naturally operate to make enhancement more difficult than under the old law. The obvious result is to increase the opposition against the extension of occupancy rights.

Chapter IV of the Draft Bill.

I have already said that if arrangements could be made for settling rents, so that zemindars could get easily the increase of rents proposed for them by the *present* law (or, for matter of that, by the new law with some modification), they would not really object to any extension of the occupancy right. If Chapter XV of the new Act proved workable, I think this would solve the question, for I believe all classes would accept a decision by Government officers upon their rights. I shall remark upon Chapter XV hereafter that I fear its provisions will be found difficult of application. Anyhow, from the nature of things and from the extent of ground to be got over, the effect of the same will be but slowly felt. I mention this matter first in order in this place, because I distinctly prefer the course of giving a complete right of occupancy at once to all ryots of three years' standing to the arrangement proposed in the draft Act in this chapter, and it is only fair to recall the objections that the zemindars are likely to take to the measure. The object appears to be, by imposing a penalty upon the eviction of ryots of three years' standing, to induce the zemindars to leave them alone until their occupancy right ripens and is perfected. I do not see why the right should not be completed at once by law. This would be less of a leap in the dark than was the legislation of 1859, since experience has at least been gained since that time. The compensation provisions of sections 28 and 29 would lead to endless strife and profitless litigation, while, under section 31, a tenant intending to relinquish his holding voluntarily might succeed in gaining compensation by establishing the plea of abatement for an insignificant sum.

Chapter V of the Draft Bill.

Sections 33 *and* 34.—I think the law might be drafted so that the notice to quit, served through the Court, should be held to be equivalent to an order of ejectment, leaving the ryot to sue against the same, if he chooses. There seems to be no reason why the landlord should have to sue refractory tenants.

Chapter VI of the Draft Bill.

Section 41.—Should there not be a saving in favour of existing long leases provided here, so that parties might enter into fresh contract according to law hereafter with their eyes open? I know of some leases for town lands just granted with a duration of 50 years.

Section 42.—If the terms of this section are suitable for village lands in the interior, they will hardly suit the case of lands in a large bazar or town. A "rate paid by other tenants for lands in the neighbourhood having similar advantages and used for similar purposes" will usually not be found. If a percentage upon market value is to be taken, the same rate will generally not be applicable for town and village lands. I would fix not less than 8 per cent. for village house lands, and even more for town and bazar lands.

Chapter VII of the Draft Bill.

What becomes of the converse case to that stated, viz. where the subordinate holder acquires the superior status. Example, the tenure-holder purchases the zemindari interest in the estate.

Chapter IX of the Draft Bill.

Section 56.—The words in italics, "unless the tenant can show," to end of section should be cut out; they will only lead to disputes and falsehood in a majority of cases. The law should aim at a clear and definite procedure for general purpose, and not spoil the whole business by attempting to provide mitigations for every contingency.

Section 64.—What has been said with reference to clause *e*, section 20 above, may be consulted here. I do not think sale for arrears will answer as the only remedy. What are the rules for summary sale of an occupancy holding?

Chapter XI of the Draft Bill.

Section 72.—It is a very general custom for tenants to agree to pay something to the landlord in lieu of enhancement of existing rents, or to avoid measurement, the object being, as they fancy, to preserve their status intact in the eye of the law. Such practice has prevailed for ages in many estates, and the dues, if such they may be called, make up a proportion of the assets. One effect of the system is the prevention of litigation. Cannot this system be protected by an illustration?

Section 77.—There are loud complaints against the provisions here proposed in this part of the country. Whatever evidence the Commission may have had before them which led to the conclusion arrived at, there is no doubt but that in this division the almost universal custom is that trees can only be planted by ryots (other than mokararridars) with the zemindar's consent, and that henceforward the fruit and timber belong to each, half and half. One gentleman informs me that if the provisions proposed become law, he will lose Rs. 10,000 upon timber in one estate alone. The prevailing custom seems to be readily accepted, and should not, in my opinion, be disturbed.

Section 80.—I think this provision merely complicates matters. The fact of a crop being on the land would, if sale is to be the means of recovering arrears, lead to a better price being offered.

Chapter XII of the Draft Bill.

In my remarks upon Chapter IV, I have advocated the giving of rights of occupancy to all ryots of three years' standing. I have accordingly no objection to offer against section 81.

Sections 82 *to* 84.—These are good. I only doubt the effect of the last sentence of clause *b*, section 84. I fear if the civil court is resorted to, half the benefit of the system will be lost to the ryot.

Section 85.—The filing of the danabundi, or appraisement papers, is a good provision. As records, however, I fear they will be as troublesome to the Collector to deal with as the putwari papers.

Section 86.—A provision seems wanted here that a commutation from payments in kind to money shall not be deemed to break the "fixed rate" allowed under Explanation 1, section 16.

With regard to the special application of the provisions of the above chapter to Behar, a declaration appears required laying down the geographical limits of that province. For a matter of that, so far as the subjects dealt with in sections 81 to 86 are concerned, I do not see why any restriction is called for. They might be applied everywhere, when conditions fitted for their adoption were found to exist. If this be so, the heading to the chapter should be expunged or altered.

Chapter XV of the Draft Bill.

This part of the Bill I regard as of greatest importance. The principle is excellent, and if it could only be made to work, the occupancy question would finally be set at rest, as right might be freely given to all. I certainly am not able to suggest improvements upon the plan set out, but I do not despair of seeing the proposals simplified and brought into working

shape while the Bill is under discussion. As it is, any attempt to work the law in an unlimited way, would, in my opinion, promptly swamp us. The efforts of zemindars and ryots will combine to produce this result. If the procedure is worth anything, the former will come to the Collector to enforce their enhancement cases for the sake of the simplification, while the latter will hold-off from private agreement in full expectation that revenue officers will give a decision in their favour. The nature of the work to be done will really be that of settlement, the work having to be carried out with the closest attention to detail in the case of each individual ryot, seeing that proceedings in the civil court between landlord and tenant will henceforward be based thereupon. What the difficulty and delay in carrying out extensive operations of the kind really is can be evidence from experience gained in the recent settlement of the Sonthal Pergunnahs, effected under Regulation III of 1872. The work there was conducted in a very rough and ready fashion, generally without measurements, and merely the total village jama being arrived at by a uniform rate for class of land throughout, while the adjustment of details for each ryot's rent was left for decision to the village headmen and their people. With this system even the work of settling about 9,000 villages lasted over eight years, and costs over two lakhs of rupees. Supposing Government could find qualified men to take up the business of working the law simultaneously in all parts of the country, I do not think the Collector or Commissioner could do their share of the business in addition to their regular duties. Thus a complete and separate agency seems indispensably necessary. My objection to the suggestion in paragraph 20 of the Government letter, No. 22^{8}6½—1322½LR, to the Board, that the revenue authorities or specially selected officers working in conjunction with the district officers, should from time to time settle authoritative tables of rates for all districts or parts of districts, as also to framing the whole chapter so as only to be applicable in cases dealt with in section 131 (another view), is that such system would work too slowly really to supply an answer to the objections of the zemindars that there is no simple process for enhancing rents. Amid so many difficulties, I can but wait in the hope that the genius of the Legislature may be able to work out some more simple method suited for general application, so as to permit of a large extension of the occupancy system without raising serious opposition.

Sections 101 *and* 107.—To secure that the proceedings before the Collector shall be complete as regards the village or estate, and that applications for tentative purposes shall not be made, it would be well to provide that the table of rates and enhanced jamabundi having been once settled and confirmed (sections 105 and 111) as regards the ryots named in the applicant's petition, no further application of the procedure against any ryots whatsoever belonging to the same village or estate shall be admitted during the term such documents are in force. Such rule would tend to produce finality.

Section 130.—I would omit this section, if the plan is followed as above suggested. In suitable cases the applicant must go to the Collector. In other instances, I think the power of transfer left to the civil court unnecessary, and likely to do harm.

Dated Bhagulpore, the 9th September 1880.

From—Baboo Soohji Narain Singh, Pleader,

To—The Commissioner of the Bhagulpore Division and Sonthal Pergunnahs.

In reply to your letter of the 19th ultimo, I have the honour to offer the following observations on the draft Rent Bill. As desired, I have abstained from entering into a discussion of the general principles on which the proposals made by the Commission are founded. I shall only remark that, in my opinion, although the Commission profess not to trench upon vested rights, they have done so very materially in many of the provisions embodied in the Bill, and that it takes away from the landlord class rights of a valuable character without giving them anything substantial in return.

2. I consider the Bill faulty, as it aims at introducing uniformity throughout Bengal and Behar when different rights exist even in the same district, as it does not uphold the integrity of contracts that have been made in the past or that may happen to be made in the future, and as it deals with arbitrary figures.

3. I do not agree in the propriety of enacting section 11, and in this view I think the definition of ryot given in section 3 ought to be amended. The object apparently is to protect actual cultivators who hold under large jotedars, such as exist in Rungpore, and under howaladars, &c., that are found to exist in Backergunge and other districts. It is also probably intended, I think, to encourage the system of *petite culture*. I dare say there is probably some custom in Rungpore and other parts of the country where these large jotedars exist, regulating the status of the holders of them in relation to actual cultivators and intermediate tenants, but if it does not exist, the subject can be provided for by special laws of local application; but there is no reason why throughout the provinces of Bengal and Behar a ryot holding more than 100 bighas (standard) should, against his will and that of the landlord under whom he holds, be converted into a middleman. Whether *petite culture* is preferable to a large cultivation in this country is probably a moot point. At any rate no case has yet been made out for the Legislature to step in and encourage the one as against the other. If we have both side by side, we may hereafter be able to judge of their merits, and as a larger number of occupancy holdings in these provinces is probably less than 100 standard bigahs, there is no special reason for interfering with those that exceed that quantity.

3*a*. The limit of 100 standard bighas is two low. A Hindu living under the joint-family system is quite able to cultivate, by the members of his family or by servants or by hired labourers, more than 100 bighas, and Indian Mahomedans are also amenable to that system. The ryots who in this district hold more than 100 bighas (standard) by a single demise do generally cultivate in the aforesaid manner. I know of many cases where ryots hold lands in several villages because they are unable to find enough in their own, and the total quantity thus held would in great many cases much exceed 100 standard bighas. This shows that the assumption that a ryot cannot well hold more than that quantity without the risk of subletting is not well founded on fact.

3*b*. Occupancy holdings at present revert to landlords on the ryot dying without heirs, and under the provisions of the Bill they would continue to do so, excepting those that may exceed 100 standard bighas, which, under section 11, being converted into tenures or under-tenures, would escheat to Government. This would be an infringement of vested rights.

3*c*. If a tenure-holder, made such under section 11, should have no sub-tenants under him, and should cultivate himself the whole of the lands, what will be the standard of enhancement under section 9? If a reasonable rent be calculated, and a profit not exceeding 30 per cent. be given to him, it is not easy to foresee whether his position would be bettered or made worse. It depends on what is meant by reasonable rent. Does it mean rent paid by occupancy ryots holding under tenure-holders of this class, or rent paid by occupancy ryots of the class from which he was raised to the position of a tenure-holder, or that paid by sub-occupancy ryots or tenants-at-will?

3*d*. The provisions of section 11 will greatly increase the middlemen class. In this district sub-infeudation is not so general and does not go so far down as in some districts in Eastern and Central Bengal. Generally speaking, the cultivators here come after the zemindars. In some zemindaries there are farmers and under-farmers, but their interests are temporary. In mahalah Kharakpur, belonging to Rajah Leelanand Singh, owing to exceptional causes, mokorrari taluks are pretty abundant, and in pergunnah Harawat there are some putni tenures, but they are rather exceptions to the general rule. It will be very undesirable to foster and create middlemen where they happily do not exist by the mere force of legislation. Instead of subserving the true interests of the country, I am afraid the measure proposed will have an opposite result.

3*e*. It is well known that a petty landlord is a much greater rack-renter than a big one. The occupancy ryots transformed into middlemen by legislation will prey more upon the next lower class. Section 9 will tend to make their rents easier in time than it would have been if they had remained ryots, and with it there will be a temptation to give up cultivation altogether and act the rôle of a middleman pure and simple. On the other hand, zemindars will refuse to let more than 100 bighas for fear of the creation of tenures under section 11, and ryots who can well afford to cultivate more than that quantity will go without land.

3*f*. Landlords will suffer loss, as by the rules of enhancement applicable to occupancy tenures they get more than by those governing enhancement of tenures and under-tenures, and there is no guarantee that the actual cultivator will benefit.

3*g*. There is no object gained by the measure when, under section 19, there may be a class of sub-occupancy ryots It is all the same whether a ryot holding less than 100 standard bighas sublets, or whether one holding more than it sublets. It is true there is more probability of the holder of the larger quantity subletting through inability to cultivate the whole, but the same may happen with the ryot who has the lesser quantity also. Legislation should interfere as little as possible with the economy of the growth of tenures of land: if officiously applied, it may in the end lead to unforeseen mischievous consequences.

3*h*. If legislation regulating the extent of an occupancy ryot's holding be deemed necessary, the limit of 100 standard bighas ought to be considerably raised; but I think the difficulties felt in the districts of Rungpore, Backergunge, &c., may be met if the definition of ryot be amended a little and framed to mean only "a person who holds land or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it by himself, or by the members of his family, or by servants, or by hired labourers, or partly by some or partly by others of these persons," and a few explanations be added showing that, in determining whether a person is a ryot or a middleman, the Court will have to ascertain the purpose above indicated, and that in order to do so it should have regard to—

(1) the description given in the original contract of letting if any exists;
(2) the description given in the receipts as ryot or middleman;
(3) any local custom bearing on the question;
(4) whether the person now in possession of the land whose status is sought to be determined does or does not cultivate as aforesaid the whole or a reasonably large portion of it;
(5) whether the area as it was originally or as it is now, if compared with the area of holdings in the locality or at a reasonable distance from it, cultivated as aforesaid by other persons reasonably leads to the inference that it could not have been a ryot's holding;

and if there are no sub-ryots, or if a reasonably large portion of the land is cultivated as aforesaid by the person in question, and there be nothing in the contract or receipts or local custom necessarily to lead to a contrary result, he shall be adjudged to be a ryot, but if there are sub-ryots and a reasonably large portion of the land is not so cultivated as aforesaid, and test No. 5 should be unfavourable to his being considered a ryot, then, notwithstanding that tests

1, 2, and 3 may be in favour of his being considered a ryot, he shall be adjudged to be a middleman, *i.e.* a tenure-holder or under-tenure-holder as the case may be.

3*j*. The decision of the question on the above basis does not impose on the Legislature the task of arbitrarily fixing a limit: it gives free scope to contract and local custom, and only controls both when the circumstances of the case would lead to a different conclusion. The question is well worth your and the Legislature's consideration if the Bill be presented before the latter in its present shape.

3*k*. The rule of enhancement laid down in section 9 is open to grave objection, as it may not under certain circumstances give any enhancement to the proprietor or zemindar, the margin of profit allowed to each successive tenure-holder leaving nothing for him.

Thus if A be the zemindar who has created a tenure at 500 Rs. yearly rent in favour of B:

B an under-tenure of the first degree in favour of C at 700 Rs. rent:

C an under-tenure of the second degree in favour of D at Rs. 1,000:

The gross collections from ryots to have been Rs. 1,500, but since raised to Rs. 2,000:

In this case, deducting collection charges at 10 per cent. from Rs. 2,000, balance is Rs. 1,800, and 30 per cent. of it is Rs. 540: balance Rs. 1,260, which D would pay to C as enhanced rent.

C would pay, deducting collection charges at 10 per cent. on Rs. 1,260 = Rs. 126, and 30 per cent. on balance as profit to himself = Rs. 340, leaving out fractions, to B Rs. 793, who would similarly pay to A Rs. 500 (collection charges = Rs. 79, leaving out fractions, and profit Rs. 214). A gets no increase, although the rental increased by Rs. 500 and the intermediate persons received more or less increase.

4. The definition of the word "rent" in specifying as rent what is payable by holders of land down to the grade of occupancy ryots to the next superior grade of holder would seem to ignore rent paid by sub-occupancy ryots, kurfas, tenants-at-will, and others, unless that is intended to be covered by what follows the word "or." If the latter definition is comprehensive enough to include such rent, what is the use of the preceding specification of certain classes of rents only?

5. The following further observations occur to me in respect of chapter I, over and above what has been stated in paragraph 3 and its sub-paragraphs—

Section 6.—The date of the Permanent Settlement, 22nd March 1793, should be specified.

The words "fixed rent" are used in section 6(*a*), but elsewhere [section 6(*b*) and section 9] "rate of rent." One phraseology should be used. This difference exists in Acts VIII of 1869 and X of 1859 also.

Section 8.—Increase or abatement should be proportional to assets and not area. Suppose the best lands have been washed away, leaving only jungle and unproductive lands, or *vice versa*. The present rule will operate injuriously to both landlord and tenant. Area may be the basis where assets cannot be ascertained.

Section 9.—In addition to what has been already said as to the provisions of this section, there appears to be no provision as to the standard of fairness in the case of tenures, &c., falling within the exception to section 6 (referring to tenures in temporarily settled estates). Why should not the rule of 30 per cent., if it be fair in the case of permanently settled estates, apply to this case also?

Section 10, *Clause b*.—"Final order so enhacing such rent." Does this mean order of the last court? If so, the case may last ten years, and the next enhancement would be delayed twenty years instead of ten, as intended.

6. I beg to make the following remarks on Chapter II—

The date of the Permanent Settlement should be specified, and the difference of phraseology in the sections where "rent" and "rate of rent," as above pointed out, are used should be rectified.

Section 18.—The observations made on section 8 apply.

Although, under the provisions of Regulation XI of 1825, ryots have a claim to accretions, it is worthy of consideration whether the complications that may arise from an enforcement of this claim, and the difficulty of properly defining the line of accretion in front of the jote lands of various small holders, do not outweigh the advantages that flow to the ryots from those provisions. Will the rent that may be assessed be liable to variation, or will it be permanently fixed? Under Act IX of 1847, accretions to estates are liable to assessment by Government. Will the assessment by Government be limited to the rent payable by the ryot?

7. The following are my observations on Chapter III—

Section 19.—In my opinion, much complication is introduced by the recognition of a sub-class of occupancy ryots holding under a superior grade of such ryots. Similarly the landlord ought to be free to deal with *khamar* lands. The law should clearly state that no length of holding under an occupancy ryot or of *khamar* lands shall confer a right of occupancy, with this exception that, in the case of the latter class of lands, such a right can be acquired under a written contract duly registered. The qualifying words "year by year," "for a term," lead to a variety of contention. Clauses (*b*) and (*c*) of this section should be entirely omitted, and everybody will then understand his position in respect of holding under occupancy ryots and of *khamar* lands under landlords if the Legislature clearly define that no rights can be acquired by tenants in them.

Clause h.—This clause saves only contracts made at the time of taking the holding and registered, but why should not written contracts made before registration was compulsory, to

the effect that no right of occupancy shall be acquired in the holding, or those that have been made or may be made before the acquisition of the right in question, though not when the ryot was first let in, be similarly saved?

Section 20, *Clause d.*—I do not see the justice of denying to the occupancy ryot the right of mortgaging the land if he has the right of sale, &c. When he has the right of selling, he is sure to fall into the hands of the money-lender if he be improvident. A mortgage security may cheapen the rate of interest he may have to pay. It may enlarge his credit. Perhaps relief by death in the estimation of some is better than recovery by the remedy of amputation. Are not the right of mortgaging and the liability to sale in execution of decree generally the logical sequences of the right of alienation conferred by the Bill?

Connected with this subject is the question of abolition of the power of distraint. What guarantee is there that a right of occupancy at every place and under all circumstances will sell for more than what may be due to landlords as arrears of rent of three or four years? If well regulated, the right of distraint cannot be generally abused.

Section 20, *Clause e.*—If there is a breach of contract wilfully made and without any mitigating circumstances, no compensation should be given. Where there are mitigating circumstances such as would justify a Court of Equity in refusing a decree for forfeiture, and the breach of contract can be measured in damages, no forfeiture should be decreed, but damages may be awarded to the landlord.

The people of this country, whether landlords or ryots, and even the native judicial officers, are not very familiar with the subject of compensations, and their proper assessment will be a matter of great uncertainty and difficulty. In the first place, tenants do not keep any record of the expenditure incurred in improvements, and when their personal labour or that of the members of their family is brought to bear on cultivation mainly, it is not easy to keep such a record. Besides, the determination of what proportion of the improvements has been exhausted and what remains unexhausted is a very complex question. Disputes will also arise as to whether the fences, rails, &c., were on the land previous to the tenant was let in or they were constructed by the tenant himself. If the principle of awarding compensation on forfeiture be adhered to, it ought to be confined to cases where the breach was not wilful, and there may be mitigating circumstances in favour of the tenant and improvements coming under explanation (*d*) of section 29 ought to be omitted. My reason for recommending this omission is that the reclaiming, clearing, and enclosing of land for agricultural purposes is such an essential part of cultivation, and therefore of letting land for such a purpose that the tenant may always be presumed to have received its *quid pro quo* when the land was taken and rent fixed. In short, that this improvement may always be presumed to have been provided for at the time of assessing the rent, and may be deemed to have been exhausted in the very first year of cultivation.

Section 21.—I fail to see the justice of the provision limiting the landlord's share of rent in kind to 50 per cent. of the gross produce of the staple crop mentioned in clause (*c*), section 23.

The proportion of 50 per cent. is generally the ratio, but different proportions also exist in certain parts of the country, and their existence, in my opinion, is proof that there must be good reasons for the ryots agreeing to them other than the mere rapacity of the landlord class. It is well-known that the Government revenue in certain parts of the country where the *bhauli* system prevailed was assessed on the money value of a larger proportion of the gross produce than 50 per cent.; and if such was the case, how can this proportion be justly reduced? This proportion is paid from before the time of the Permanent Settlement. The ryot has a right to claim under section 16 that it be not modified. Ought not the landlord to have a similar claim? When the proportion is less than 50 per cent., can the landlord raise it to that proportion? Suppose a ryot is holding land for rent in kind, and the proportion he pays is less than 50 per cent. of the gross produce from the time of the Permanent Settlement: under section 16, this proportion cannot be changed, but if he pays more, under this section it will be reduced. There is no reciprocity then if this section be passed. It may be thought that more than 50 per cent. where such a proportion exists, is too excessive; but it will be remembered that cultivation in this country at present does not require so much labour as in European countries, and the ryot can well afford to pay it where it prevails. As the Commission have not thought fit to reduce money rent where it bears a larger ratio to gross produce than 25 per cent., the same reasons ought to prevail in the case of rent in kind. The effect of the provisions of the latter part of this section will be the abolition of the payment of rent in kind altogether where non-staple crops may be grown by the ryot. If a ryot is permitted to change the crops for which he had agreed to pay a certain proportion of the gross produce, he will, having the power to introduce any non-staple crop and the advantage of forcing the landlord to accept money rent not exceeding 25 per cent. of the average annual value of the gross produce, cultivate a non-staple crop, and thereby reduce his liability and the landlord's rent, without entering into any contract with him in respect of the proportion of such non-staple crop payable to his landlord. If the object of the Legislature be to abolish the system of rent in kind, it ought to do so in plain terms instead of by indirect provisions of this kind. If the system be kept on, no ryot ought to be allowed to change the crop which he had contracted for without entering into a specific agreement in writing with the landlord regulating the shares of both parties in it.

Section 22.—This section deals with the grounds of enhancement.

The third and fourth grounds are not exhaustive. Suppose productive powers or prices increase by the joint efforts of landlord and tenant, should not the landlord get a proportionate share of the increase? I think it would be a great help to the cause of agriculture if, when both contributed labour or capital, or one labour and the other capital, they were both allowed to divide the increase proportionately to the amount of their respective contributions. It may sometimes be difficult to say that the increase was in no way due to the agency of the ryot when it would be mainly owing to capital expended by the landlord in the construction of a water-course or an embankment or other similar works. If landlords knew that the mere fact of the tenant contributing partly towards the increase would not deprive them of the benefit of it if they also helped to bring it about, I think many landlords, who now hesitate in helping towards improvement of the cultivation of the lands of ryots having rights of occupancy, would gladly come forward to assist in it.

It may be thought that the use of the words "in the vicinity," and the altered wordings of grounds Nos. 3 and 4 give something to the landlord which he had not under the corresponding provisions of Act VIII of 1869 and Act X of 1859, but this is not really the case. The decisions of the courts, I mean of the Calcutta High Court, have interpreted the words "in the places adjacent" in a liberal sense,* and the judgment of Mr. Justice Trevor, which was the judgment of a majority of the Court, in the well-known case of Thakurani Dassee, in which the rule of proportion was laid down expressly, says—"The value of the gross produce before the alleged alteration in the same is to the rent which the land then bore as the altered value of the produce is to the rent which should be assessed on it, or, in another form, the old rent must bear to the new rent the same proportion as the former value of the produce of the soil bears to its present value;" and several lines lower down Mr. Justice Trevor, in meeting an argument raised that it would be impossible to find the value of the produce, net or gross, at the time of the last adjustment, which may have been at a remote period, has held that "it is not necessary to refer to the period of the last adjustment itself. The price of the produce previous to the date of the alleged rise in value will be sufficient data on which to base the formula of proportion, &c." Thus it will be seen that the wording, though slightly different, does not convey any new rights, and does not confer anything more substantial than what is already possessed by landlords. The very enunciation of the rule of proportion shows that the comparison may be made with the time of the last adjustment of rent, or with any subsequent period anterior to the alleged increase. It is not necessary to fall back on the period of last adjustment of rent if the causes which have operated to bring on the increase were not in existence then. The period just before the operation of the causes leading to the increase would afford adequate materials for the application of the rule, and the Bill only states in plain words what was self-evident though not expressly stated. I have dwelt at what may seem to be unnecessary length with this subject, because from your marginal notes appended to paragraph 6 of the annexure to your letter it would appear that you consider the altered wording to confer some advantages to landlords which they do not possess.

* Section 21, W. R., page 157.

Section 23.—I now proceed to examine the provisions of this section, which deals with the extent of enhancement, and the proportion in which it is to be divided between the ryot and landlord.

Clause (*a*).—The landlord will get the benefit of the whole increase if brought about by him or at his expense, and one-half if brought about neither by him nor the ryot, if enhancement be on third and fourth grounds.

There ought to be a further provision where the increase is the result of the agency and expense of both landlord and ryot. The law should not ignore such a case altogether.

The provisions of this clause, as far as it goes, would appear to be clear and practical, but in reality they are very unsubstantial, as they are limited and modified in a variety of ways by what follows—

(1) *Clause* (*b*).—The enhanced rent shall not be more than double the former rent.

(2) *Clause* (*b*).—Shall not bear a higher proportion to such former rent than the increased productive powers, or increased prices bear respectively to the former productive powers or prices.

(3) *Clause* (*c*).—Shall not be more than one-fourth or three-tenths of the average annual value of the gross produce of the land for which such rent is payable (calculation to be made on staple crops).

(4) *Clause* (*d*).—May be progressive for a period not exceeding five years.

(5) *Clause* (*e*)—If on fourth ground, Road Cess, Public Works Cess, or the like, paid by the ryot, to be deducted from the enhanced rent.

(6) *Clause* (*c*).—If enhancement on first ground, limitation No. 3 will apply.

If a landlord has solely contributed to the increase, clause (*a*) will entitle him to it wholly, but he will not benefit to the whole extent if the result be an increase of the rent twofold (No. 1). Then we have the rule of proportion as a further limit. This rule was considered unworkable in Sir Richard Temple's time, and a simpler rule of enhancement was sought for; but instead of any simpler rule, we have the rule of proportion repeated with various limitations. Limitation No. 3 fixes maximum rent to one-fourth or one-tenth according to the class of occupancy ryots whose case may be before the court; then enhancement will be progressive, or may be so, at the discretion of the Court; and if on ground No. 4, cesses payable by ryots will be deducted. The landlord may well exclaim that he would

rather abide by the rule of proportion in force under Acts X of 1859 and VIII of 1869, than enjoy the benefits of the simple rules proposed by the Commission, for not only does he recognize his old friend—the rule of proportion—in them, but he figures with so many fetters about him, that it would be better for him to have him unfettered as he was. Now let us consider whether the proposed rules are equitable. If the landlord contributes solely to the increase, and if the principle is conceded that he ought to get the whole benefit as it has been [in clause (*a*)], then why should he be deprived of it by these further limitations? Why should not rent be more than doubled if it was due to the landlord's exertions and capital? Why should limitation No. 2 or the other limitations apply? It is no inconvenience or hardship to the ryot to be made to pay this increase though more than double the former rent, for he did not earn it, he did not bring it about, and therefore he cannot expect to keep it. Similarly, if the landlord be considered entitled to a moiety of the increase in cases coming under the latter part of clause (*a*), why should this right be restricted by further limitations.

Limitation No. 3 is a very arbitrary one. It is based on the assumption that rents in this country should not go beyond 25 per cent. of the gross produce. But what is the past history of rent in this country? How much of the gross produce did the Moghul Government take as revenue? In some districts in Behar as much as ten-sixteenths of the gross produce were taken as revenue? What did the British Government take as revenue at the time of the Permanent Settlement? Mr. Shore, in his Minutes relating to the Permanent Settlement of Bengal, &c., appended to the fifth report, shows that as much as 60 per cent. in some cases, and generally 50 per cent. of the gross produce, that is, the money value thereof, was the basis on which revenue was calculated (*see* fifth report, Madras edition, page 599, paragraph 5). The system and proportion of assessment of *nakdi* and *bhauli* rent as obtaining in zemindaries near the town of Monghyr about the time of the Permanent Settlement will appear from what is stated at pages 214 to 218 of the fifth report quoted above. The words *khul*, *kunhul* (*kanail*), and *pah* denote the three stages of cultivation which lands are susceptible of. When virgin soil is first broken it is *khul*. The ryot gets 22 and the landlord 18; somewhere 24 and 16. It then advances to the *kanail* state after a time, and ultimately reaches the stage of highest development called *pah*. The *nakdi* rent was as high as Rs. 5-8. Suppose a bigha of land to have produced then 16 maunds, and the price to have been 12 annas per maund. The money value then was Rs. 12, and rent Rs. 5-8. If the productive power remained the same, and price to have increased to Rs. 1-4 per maund, the increased money value would be Rs. 20. One-fourth of this is Rs. 5, but as Rs. 5-8 is the rent from about the time of the Permanent Settlement, the landlord will not share in the increase by reason of limitation No. 3, even if it should be due to the establishment of a hât by him which caused the increase of price. By clause (*a*), section 23, he ought to get the whole of the increase amounting to Rs. 8. If it was due to the operation of any cause coming under the latter part of the said clause, then he ought to receive Rs. 4, a moiety of it, but he really receives nothing by the operation of Rule 3.

Again, in the case supposed, take the former rent to have been Rs. 4. Then one-fourth of 20 being 5, he will receive an increase of Re. 1. Rule 1 will not be a bar, as the difference between 5 and 4 is only 1. By Rule 2 the result will be 12 annas : 20 annas :: Rs. 4 : Rs. 6⅔, but Rule 3 will restrict the enhancement to Rs. 5 only.

By the rule of proportion laid down in the Full Bench case, the landlord in both these cases would obtain increase. In the first case the rent would be increased to Rs. 9⅓: the relative profits of landlord and tenant would remain the same. In the second case he would receive as enhanced rent Rs. 6⅔, but the proposed rules only give him Rs. 5, not to say of the result of the exercise of the discretionary power and the deduction due to the provisions of clause (*e*). In all these cases the provisions of clause (*a*), section 23, do not really come into play. Similarly in the case of increase of productive powers of land.

Again, to judge of the operation of Rule 2, suppose the old rent in the case put to have been one rupee per bigha, the increase to have been at the expense wholly of the landlord or at the expense of neither. In the former case the measure of the benefit is Rs. 8, in the latter Rs. 4. By clause (*a*) the landlord ought to receive Rs. 9 in the one case and Rs. 5 in the other. He cannot possibly receive Rs. 9. Rules 1, 2, and 3 will interfere with his doing so; but in receiving Rs. 5, Rule 3 will not interfere, but Rules 1 and 2 will. Thus 12 annas : 20 annas :: 1 Re. : 1⅔ Re. Instead of the increased rent of Rs. 5, the landlord will, by the joint operation of Rules 1 and 2, only receive Rs. 1-10-8. If Rule 3 had not existed, he might have received Rs. 2 only, further increase being restricted by Rule 1. It is useless to multiply instances illustrating the restrictive operation of the rules embodied in section 23.

I do not also see the justice of clause (*e*). If the increase of value is due to rise of prices, why should the road cess and public works cess be deducted? Perhaps the theory is that the ryot has contributed to the increase by the payment of these cesses; and as the amount of contribution is infinitesimally small, enhancement should not be barred, but the amount contributed ought to be deducted. Now, it does not follow that rise of prices is always due to good roads, and a single farthing might not have been expended on the district out of the Public Works Cess Fund. It may be said that expenditure elsewhere has a tendency to general improvement, and therefore to a rise in prices, but the deduction can hardly be justified on reasoning of this kind. The result will be that some tenants will have to pay these cesses; in other cases they will wholly come out of rent. The principle of the Road Cess and Public Works Cess Acts will have to be departed from. As both landlord and tenant contribute to these cesses, the increase ought to be shared by both without charging

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the cesses payable by the one upon the other. If the increase should be owing to roads made or public works constructed in a given locality, ought not the deduction of these cesses entitle the landlord to the whole benefit of the increase?

The restriction of the first ground of enhancement by the provisions of clause (c) is wholly a departure from the principle which has been followed and assumed as correct ever since the promulgation of the laws of 1793. The principle is no other than that on which the theory of pergunnah rates was based. If a ryot happens to pay rent at very low rates now, and all other ryots in the locality pay much higher rates, which bear a higher proportion to the money value of the gross produce than 25 per cent., this ryot's rent will not be enhanced beyond 25 per cent. of the money value of the gross produce. While all other ryots will pay more, he will pay much less. It may be said that he was paying less before and therefore much injustice is not done, but his rents may have been low owing to his having been the servant of the landlord, he may have ceased to be in service, and the landlord may not like to show the same consideration to him any more. The remarks made here in respect of low rates, which may have come into origin owing to personal or other considerations being perpetuated, not only apply to cases under the first ground, but also to the other grounds, namely, 3rd and 4th. According to the Full Bench ruling in the case of Thakurani Dási, no such perpetuation can be made.

According to the provisions of the Bill an occupancy ryot can (*see* sections 77 and 29) construct tanks, &c., and plant fruit-trees on his land. If a ryot should make a tank on four or five bighas of land, or plant a garden on 10 or 12 bighas of land, or convert the whole of his jote of 10 bighas into a tank or garden, how will the provisions in respect of enhancement apply to these cases? After the tank or garden is made, a zemindar constructs a water-course, which fructifies the lands of the ryots. As the land of the ryot in the case before us does not yield any crops, he may not require water. If the land had been crop land, he would have taken water, and the productive powers of it would have increased. Ground. No. 3, of enhancement, would have been applicable; but will it apply to the altered circumstances of the land? As the third ground is worded, it appears to me that it can hardly apply to land the productive powers of which have not actually increased. Ought not cases of this description to be provided for? Will it not be next to impossible to the landlord, years after, to prove the class to which this land belonged, if he should seek to enhance on the first ground? The cases put are not merely problematical. You know the large expense incurred by the Court of Wards, representing Raj Darbhunga, in the construction of irrigation works in mehal Havali Khurruckpore. Other zemindars may afford, and have afforded in a more limited scale, facilities for irrigation, and therefore these cases ought to be considered and provided for.

I think the power given to the Board of Revenue in section 23 will lead to uncertain results. The Board will be guided mostly by the views of the Lieutenant-Governor for the time being. The relation between landlord and tenant—the principles and mode of assessment of rent—ought to be a stable one and not liable to change every five years or so. I prefer a judicial determination of questions of this kind on evidence in the presence of all parties, whether by the Revenue authorities or the Civil Courts, over mere executive interference based on *ex parte* reports and statements. There is much room for display of over-imagination and conjecture when he is not tied down to judicial forms. However experienced and able the Members of the Board may be, they will depend on the reports of the district officers, and the latter will act on statements made, or enquiries held, by their subordinates; possibly on police information. The real parties that may be affected may not be consulted at all, or, if consulted, may be considered to be totally unreliable as interested parties, and the Collector may arrive at a conclusion on insufficient and imperfect data according to his own idea of the fitness of things.

Section 24.—This section gives effect to contracts, and very reasonably too; but in the same way contracts made by ryots and landlords, regulating the principle or the mode in which enhancement is to be made, ought to be made operative.

Section 25.—This section treats of abatement of rent. The illustrations appended to section 22, so far as they may be applicable, ought to be attached to this section.

8. I beg to make the following remarks on chapter IV, which treats of ryots who have held land for three years or more, but less than twelve years.

In my opinion the whole of this chapter ought to be omitted, and that for the following reasons—

(1)—Because it is not required. Ryots have not yet expressed any general feeling that this conditional right of occupancy should be given to them.

(2)—Because such a right is unknown, and, if created, would be an unjust infringement of the right of the landlord. The legislature having created a right of occupancy by twelve years' occupation, and this right having been enjoyed and been in existence for more than twenty years, it would be unjust to interfere with it, and it may be strengthened, if necessary; but the creation of novel rights, for the sake of symmetry or theory, ought to be avoided.

(3)—Because it would lead to endless complications.

(4)—Because the provisions of it are entirely onesided.

(5)—Because, as I have already pointed out before, compensations are not well understood by the people of this country.

(6)—Because it would lead to frequent eviction, and thereby injure the cause of cultivation, as landlords, in order to prevent the accrual of rights under this chapter, would give short leases and eject every three years.

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Having stated the general objections, I proceed now to examine briefly the provisions of the chapter in detail. Double compensation has been provided for—one under section 28 and another under section 29. If improvements have to be paid for, why should increased rent be given?

I have already stated in my remarks on section 20, clause (*e*), that enclosing and clearing should not form an item of compensation.

I would alter clause (*b*) so as to include only tanks, wells, and other works for the storage, supply, or distribution of water for the purpose of irrigating and improving the agriculture of the land in question lastingly, and having that effect.

I would omit the planting of fruit-trees, clause (*f*). The ryot takes the land for the purpose of agriculture and not for planting fruit-trees. If this be his object, he can make a special contract. The ryot knows that he has no right of occupancy, and therefore he should not be allowed to affect the land permanently by planting fruit-trees. It is a mistake to think that fruit-trees really benefit the landlord if the land is not near a town. Besides, what valuable fruit-trees can be grown in so short a period? The contention about their value would be endless.

If the chapter is kept on, all cases in which the ryot has entered, or may enter, into an express contract to vacate at the expiry of a stated term, or in which he has stated, or may state, that no right of occupancy shall accrue, should be exempted from its operation.

Regard being had to the provisions of the Bill relating to enhancement of rent of occupancy ryots, no zemindar, I think, would like the conversion of ryots of this chapter into ryots having full rights of occupancy. They would rather prefer that the provisions of the chapter remain as they are, being the lesser of two evils. If the provisions stand as proposed, I think they are likely to check eviction in one direction, namely, in cases coming under the chapter, as the compensation clauses, and the general tendency of it would deter eviction; but they will increase it in another direction, namely, in cases of occupation for less than three years

9. On chapter V I have only to say that the provision, that enhancement shall not be more than double the former rent, is uncalled for. If the ryot may not agree to the rent demanded, he can give up the land. Why should there be a limitation to enhancement when the principle applicable is that the ryot has no right to oppose ejectment.

10. Chapter VI.—On this chapter my remarks are as follow—

Section 36.—In this section the word "section 16" is perhaps a misprint for "section 19."

Will ryots holding under section 16 be entitled to use the land in any manner they choose? The Bill proceeds on the assumption that ryots generally build on their jote lands, but this is not generally the case; and where they do build it is done by mutual contract at the time the jote is acquired. Generally the ryots' houses are on the village site, at a distance from his cultivation, for which somewhere no rent is charged and elsewhere it is charged. The erection of buildings ought to be left to be regulated by contract, as no difficulties have arisen in practice.

Sections 37 *to* 40.—Why should a landlord, who is not aware of the erection of the building, be placed at a disadvantage? There are absentee zemindars; and why should a ryot reap the fruits of his fraud if he should collude with the dishonest steward?

Section 42.—Five per cent. per annum of the market value of land is certainly not fair rent. What is meant by market value? Does it mean market value of the land as if it were a *fee simple*, or market value if the landlord should sell his own interest, or the united interests of every grade of landlords up to the proprietor and above the party in possession of the building, or of what interest? It is not practicable to fix a rate of universal application, as the rule would apply to towns with the exception of Calcutta? Consider how high building or ground-rent at Jamalpore is.

11. Chapter VII treats of the doctrine of merger, and on it I have to say that, as worded, it deals with the acquistion of an inferior estate by a person holding a superior estate; but the converse case has not been provided for.

The period of three months referred to in clause (*b*), section 43, is too short.

12. On Chapter VIII I beg to state as follows. Section 48, clause (*c*) mentions of notice within a reasonable time. Ought not the period to be fixed by the Legislature?

Section 51.—With reference to the definition of a holding and the provisions of this section, it ought to be considered whether occupancy tenures, provided for in section 41, are provided for or not. Will there be any sanction in such cases of the nature of those laid down in sections 50 and 51, or not?

13. My remarks on Chapter IX are are as follow—

Section 57.—The provisions of clause (*c*), section 57, are general, and therefore petty lakhirajdars, brahmotadars, petty landholders who own a few cottahs, a beegah, or a few beegahs, would have to provide duplicate receipts. Is it not too much to expect from them? Perhaps they have never known of printed forms. Laws of this kind are best observed in the breach than in the observance.

When duplicate receipts are given, is it not superfluous and useless that statements of account at the end of the year should be given? Is it not better to provide for written engagements once for all, than yearly accounts of this description every year?

Section 59, *clause* (*c*).—This section should include Road Cess, Public Works Cess, and other cesses that may be levied by Government where payable.

Section 61, *clause* (*c*).—There is no valid reason why the depositor should not get the deposit back within three years on return of the receipt. He would, if he does so, lose the

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benefit of the deposit. Suppose he does not get credit for the amount deposited in the suit brought against him? He may like in that case to withdraw it within three years. Why should not this be done?

14. On Chapter X I have to offer the following remarks—

I do not think that the provisions relating to the appointment of a joint-manager by the District Court are called for.

Section 69, *exception* 1, saves agreements made between a tenant and one or more of several coparceners; but why should the consent of the other coparceners be necessary to its validity? If the agreement is made by the ryot, it ought to be quite enough.

Section 70 —Although the High Court have held that one coparcener cannot measure or enhance rent under the present law, even if his collections are separate, I have always thought that these rulings are based on a misconception of the state of things as existing in this country. If collections are separate, the landlord ought to have the power of measuring and enhancing rents, for it is a condition of separate collection that the landlord has the power of dealing separately with the ryots. Much inconvenience and loss is sustained owing to some refractory coparcener playing in the hands of the ryots, or any single ryot, or his being at feud or bad terms with the rest of the coparcenery body. If the ryot does not submit to a measurement, a coparcener owning a fractional share may keep the other coparceners at bay for years together, until a butwara is made similarly in the case of enhancement. I know of several cases which have taken this turn, and one I shall mention here, as it is somewhat peculiar. All the coparceners of a certain joint estate served some ryots with notices to quit, and brought suits for ejectment. Some of the ryots deposited the rent of their lands, and induced one of the coparceners to draw the amount due to him proportionately, and in the ejectment suit pleaded that one of the plaintiffs having received rent deposited for the year in which they were required to quit, the suit is at an end. This case is still pending, but it shows the inconvenience and injustice of the provisions that prevent a coparcener from claiming a right of measurement or enhancement when he collects and settles separately.

15. The following are my remarks on Chapter XI—

Section 75.—The effect of illustration (*b*) will be very injurious. An estate is sold for arrears of Government revenue. A relative of the out-going zemindar may have some lakhiraj land, or may pretend to have it. If he should increase the area in the former case, or in the latter pretend to hold as lakhiraj, how can the purchaser get justice done if he is not allowed to measure. Every zemindar should have the right of measuring the whole estate of which he is the recorded proprietor, inclusive of all rent-free lands. Such measurements harm nobody.

Section 77, *clause* (*b*.)—This is a clear encroachment on vested rights, as in many districts, or parts of districts, landlords share the fruits and trees. There is no reason why this right should be taken away. Local custom and contract ought to be allowed to stand.

Section 78 —This section as it stands might interfere with the rights of auction-purchasers at Civil Court or Revenue sales, to recover rent when possession is delivered in the mode prescribed in the Civil Procedure Code, or Act XI of 1859, &c.

Section 80.—What is meant by a reasonable rent? Is it the rent which he paid formerly, or the share, of crop which, if let in kind, the landlord would have obtained? If the former, then the ryot holds the land on very advantageous terms. Indigo-planters often in some places take possession of lands not belonging to them, or keep possession when their right to it has expired, and grow indigo, making large profits They fight out for several years in the hope of keeping possession as long as they can, because they pay as mesne profits a reasonable rent, which, in comparison to their profits, is nothing. Ryots would try to do the same if reasonable rent is construed according to the liberal views of the Commission.

16. On Chapter XII I have first to point out that Behar should be defined. Sometimes the Bhagulpore and some parts of the Chota Nagpore Divison are included in Behar, and at other times not. Perhaps this Division does not come within Behar for the purposes of the Rent Bill as it was in no way represented at the late Behar Rent Commission. At any rate, if the deliberations of that Commission should affect this Division, it ought to have had a place in it. The circumstances of this Divison are in many respects dissimilar from those of the Patna Division, and perhaps it would be better to substitute Patna Division for Behar to prevent future misapprehension. If this Division is intended to come under the provisions applicable to Behar, then what districts, or parts of districts, would come, ought to be clearly specified

Section 81.—The provision in this section is a very sweeping one. If in 1800 Rampore and Shampore formed one estate, and in 1802 there was a butwara separating them and constituting two different estates, (A), who occupied five beegahs in Shampore continuously for twelve years, though long after the date of butwara, would, if he happened to hold 50 beegahs in Rampore for three years preceding the date mentioned in the section, acquire a right of occupancy therein, although he might not have had a cottah of land in Rampore at any previous time. Practically in such a case a right of occupancy is conferred by three years' occupation, and the Commission should have declared so in plain terms, instead of attaching an irrelevant condition. The reason for such a sweeping and illogical provision is not far to seek. Some members of the Behar Commission stated that scarcely any ryot in Behar could make out satisfactorily a case of having a right of occupancy in his fields by reason of constant change, &c., and Mr. Mackenzie, very apt to apply analogies derived from the ancient village communities when favouring his theory, whether they are really applicable or not, thought that this was but a relic of the old village system, according to which fields were re-distributed among the

villagers after a certain number of years. In the first place I demur to the proposition that in the Patna Division no ryot can make out a right of occupancy in any portion of his fields. On the contrary, I think that many ryots have cultivated, and do cultivate, the same field for more than twelve years. In the second place, if this provision should apply to the Bhagulpore Division, I am in a position to state confidently that the assertion is wholly inapplicable, and that the circumstances of occupancy do not differ materially from those in Bengal, except where special contracts have been made. In the third place, there is no analogy whatever of any kind between the want of fixity of tenure or the change of fields in any part of Behar, and the old re-distribution of village lands among the village community. Besides section 82 meets cases of exchange. Mr. Mackenzie further thinks that because in his opinion all khudkasht ryots, the moment they touched village land for cultivation, immediately acquired a right of occupancy therein, that therefore occupancy for three years continuously should be taken as presumptive proof that the ryot has the intention of being a permanent occupier, and hence a right of occupancy should be given to him. No person who approached the question from a judicial point of view, and not that of a mere partisan, would affirm that even assuming that khudkasht ryots had the right contended for before and at the time of the Permanent Settlement, that the said right was necessarily kept on by the Code of 1793, which recognized or conferred certain rights and privileges to the landholding class, or that such a right is in existence now. Rights grow and are lost in time, and it is not a sound proposition that the existence of any right more than a century ago is any proof of its actual existence at the present moment. If we were to resuscitate rights which existed in ancient times, we might probably have to see the whole surface of the earth around us completely changed, and to live a life which our ancestors did many centuries ago. Rights in land as actually existing should be recognized by the legislature, but their creation ought to be left to the operation of the laws of economy. All that the legislature should do is not to afford any special encouragement or facilities to the development of any system or class of rights which may affect the well-being of the community; but this is far from the arbitrary creation of rights in the manner proposed by the Commission. But if we are to revert to what Mr. Mackenzie considers to have been the common law of the land, we ought to revert to it in the interest of both parties,—namely, the ryot and the landlord. In that case right of occupancy by twelve years occupation ought to be given up, and khudkasht ryots only held to have that right. Why should three years' occupancy then confer such a right on other than khudkasht ryots? But what is there in three years' possession to show that the ryot has elected to take the rights and obligations of a khudkasht tenant? Was this the old village custom, or is it not a new notion of some members of the Commission? But can a person take the rights and obligations of a khudkasht tenant without the consent of the village community? and as the village community is no more in existence, and is centred rather in the village landlord, without the consent then of such landlord? And yet we find the rule advocated that three years' occupation should confer a right of occupancy against the will of the landlord. A modified form of it is sought to be introduced everywhere, and the real form of it, though covered with a flimsy hood, is practically proposed as the law for Behar.

Section 83.—For reasons stated in a former part of this letter, I consider the limitation of the landlord's share in *bhauli* to be improper.

Section 86.—I think this is an arbitrary rule, and interferes with custom and contract. There is no more reason, looking at the question from a judicial point of view, to interfere with a *bhauli* arrangement, than there is with a *nakdi* arrangement. It is well known that in Behar Government at the time of the Permanent Settlement took a very high percentage of the gross produce as revenue, and it is not just that the landlord's share of it should be now reduced, and money value fixed against his consent and will. It is not, however, generally known that this *bhauli* system and proportion of more than 50 per cent. is not general throughout Behar. It prevails in parts of the Patna, Gya, and, perhaps, Shahabad districts. But in these districts, especially the two former, the landlords maintain a system of irrigation, which, in former times, must have cost a good deal, and its maintenance also requires periodical outlay. It is not correct, therefore, to say that the landlord does not contribute in any way to the promotion of agriculture. It is true they have not done what according to advanced notions of modern days they ought to do; but education has only begun to permeate the land, and without it nobody can well understand his duties to the community at large. Moreover, sales and purchases have taken place on assets based on the higher proportion of *bhauli* produce, and it would be unjust to those who have invested money in land in such places recently, or subsequent to the Permanent Settlement, on the faith of such assets.

But how will enhancement be regulated after this conversion? According to the proposed Bill, 25 per cent. of the average gross produce is maximum rent, but here the proportion must be larger, as, after deduction of risks of cultivation, &c., the money rent fixed would certainly bear a larger proportion to gross produce than 25 per cent. If the field had remained *bhauli*, the zemindar would have shared in the increase of prices as well as of the productive powers of it; but if enhancement in these cases on the conversion of rent in kind into cash rent, be regulated by the rules applicable to cash rent, then the landlord will probably obtain no increase for half a century or more, while the ryot will daily gain an advantage over him, as he will benefit by the presumption of twenty years' fixity of rent. There is moreover another phase of the question. The *bhauli* system may have continued for years, possibly from the time of the Permanent Settlement; at any rate, the presumption of twenty years would well apply. Would the cash rent after commutation from rent in kind be held to be fixed? Ought it to be so? It represents the present money value of

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grain; but prices may increase, and if the field had remained *bhauli* probably the landlord would have shared in the increase of the productive powers of the land. Mr. Field suggests adjustment of price according to the principle of the Tithe Commutation Act; but it will not be wholly fair to the landlord or the tenant, for increase or decrease of production, owing to increase or decrease in the productive powers of the land, will not then be taken into account.

17. I am afraid this letter has become more lengthy than I originally intended it should be, and I might desist here from further trespassing on your valuable time and attention, as the provisions of the Bill relating to the substantive law of landlord and tenant have more or less been considered; but probably you would think this letter incomplete if I do not state my views on Chapter XV, which treats of the procedure relating to enhancement, especially as they are new, and from their novelty, may seem to compensate landlords for what is proposed to be taken away from them. But in point of fact the procedure cannot compensate for the loss of substantial rights, and indeed can only apply the substantive law and not make it. Whether the machinery be that of the Revenue or the Civil Courts, the same rules will have to be worked and applied. The expense of working them through the Revenue Courts bids fair to be so large, that I am led to think that very few zemindars will be inclined to avail of their machinery. I know that over and above the salaries of the Collector and his establishment, institution fees, at least in those cases, will have to be paid where there will be a transfer of them. Whether such fees will be payable on applications originally presented to the Collector is not very clear. At any rate, salaries, &c., and institution fees when levied, taken together, will be as heavy a bill as used to be the bills on the equity side of the late Supreme Court, or of the Court of Chancery elsewhere, which instead of bringing a new estate, entailed the loss of what the parties originally had. In such a state of things, it is not fair that the landlord should be compelled to have recourse to the expensive machinery. He should not be deprived of the machinery of the Civil Courts in raising rents on ground No. 4. Moreover, the powers given to the Revenue authorities are liable to be exercised in an arbitrary manner, and in some cases at least they have the power of deciding material questions affecting the parties without giving them an opportunity of being heard. When a Revenue officer makes a settlement of a Government estate, he is bound to look to the interests of Government, and the superior Revenue authorities act as a check upon them; but no such obligation can rest on them when they will fix the table of rates, enhanced jummabundi, or settlement jummabundi. It is the interest of the parties that proper rates are fixed and the work is properly done; but if they are not heard, they will be bound by the exercise of discretion, however sound it may be, on an unheard case. That discretion would in the main be guided by the views of the Lieutenant-Governor for the time being, as I have already remarked, and the rights of parties should not be left to be regulated by the sole discretion of an officer, however august he may be, when the parties have no opportunity of appearing before him, and asking him to arrive at a judicial finding.

I also consider the procedure very complicated. The reason why the Civil Courts have hitherto failed to do justice between the parties in enhancement suits is that they do not generally make local enquiries and order measurements to be made. They are too busy, and the presiding officer has no time to go and make enquiry personally. The Civil Court amins are not a very reliable class of men. If the Civil Courts could command the services of a Deputy Collector of experience, who has been in the district for some years, and who knows the past and present history of rents in it, the work would go on satisfactorily at much less cost to the parties, than the proposed procedure would involve. If the Revenue officers be deemed more fitted to try the enhancement suits, they might be vested with power to try them subject to appeal to the District Judge, but this double machinery is a source of inconvenience, delay, and expense to all parties.

Section 95 (*a*).—Will a Beerbhoom ghatwal; a mokuraridar for life; a Hindu widow; junior members of the Maharajah of Durbhunga, who get maintenance grants of a permanent character, but not transferable, be entitled to proceed as laid down in this section or not? Will Maharajah Jotendro Mohun Thakur, who has got a life estate according to the judgment of the Privy Council in the estate of the late Baboo Prosono Kumar Thakur, be entitled so to proceed?

If a certain number of ryots agree to the rates claimed by the applicant, or to the table of rates prepared by the Collector, and others object to them, will or will not they be bound if ultimately the revising authority should allow the objections of the non-consenting ryots?

In cases transferred under section 130, will institution fees (Court-fees), as well as costs as provided for in section 127, be charged or not?

In cases under section 131, if the dispute be as to existing rents, ryots saying it is less than what it really is, or the landlord saying the reverse of it, will the Collector proceed to settle? If so, will he ascertain existing rents only, or prepare a table of rates, or enhanced jummabundi, or settlement jummabundi. If his assistance be required by the ryots and not by the landlord, who will pay costs in the first instance? If the legislature should think fit to pass the double machinery proposed in the Bill, I think it would be better to empower the Civil Courts to try questions of enhancement on all the grounds of enhancement, give them facilities for making local enquiries, and leave it optional to the plaintiff to have recourse to the Revenue authorities or the Civil Courts. The experiment in a few years will show which set of Courts give satisfaction, and those that may be found to work satisfactorily might hereafter be kept on, and the power of the other set to try enhancement cases taken away. I do not, however, think that the machinery proposed in the Bill

affords any reasonable facilities to landlords either in the recovery of rents or enhancement of them, and therefore, I think, that it would be a further hardship to them if occupation for more than three years should be held to confer a full right of occupancy, and with it, the right to hold at privileged rates of rent, power of alienation, and all other privileges incidental to the existence of such a right. I beg to draw your attention to the arguments stated by Mr. Field at pages 410 to 414 of the annexures to the report of the Commission, against the creation of such a right of occupancy. I have assumed that a khudhasht ryot, meaning a ryot who lives in the village, may have a right of occupancy in lands held by him in it, however short the period of occupation may be; but I do not think that custom or the regulation law favours such a view. Mr. Mackenzie, when pressed by the meaning attached to khudkasht rights in the North-Western Provinces, retorts that it does not apply to Bengal; but we all know that the village system, and subordinate landed rights with it, are more traceable in the North-Western Presidency than in Bengal, where they underwent a larger degree of disintegration. If the village system at all existed then, and where the landlord class, even before the Permanent Settlement, had or exercised larger powers and privilges, tenant right existed in a l sser degree in Bengal than in the sister Presidency.

J. A. R. and T. A. G.—Reg. No. 9168J.—118—20-12-80.

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To

The Hon'ble Sir Ashley Eden, K.C.S.I., *Lieutenant-Governor of Bengal.*

The humble memorial of the landholders of Backergunge.

Most respectfully showeth,—

1. That your memorialists have perused with the greatest anxiety the report of the Rent Commission and the draft Rent Bill, and beg to submit to your Honor the following memorial.

2. That the Commissioners have unnecessarily proposed to abolish the recovery of rent by distraint. It is a custom which has received the sanction of immemorial usage, and has been worked in this district very effectively by the landholders, with few instances of abuse, ever since the Permanent Settlement.

3. That with regard to the creation of permanant tenures and transferable rights to ryots, your petitioners would beg to point out the following objections:—

(*a*)—It will have a tendency to make the maliciously-disposed ryots sell their lands to rival landholders, to the loss, detriment, and annoyance of their own superior owners. It is already too well known that ryots in this district, in many instances, indirectly usurping to themselves this right by a system known in this district as "zimma," have caused thereby endless feuds and affrays, not only between themselves and their landlords, but between rival landholders.

(*b*)—Ryots will be thereby encouraged to withhold rent, sell their rights, and abscond, and in such a case, as the ryot is protected from eviction, how is the landlord to be compensated for his loss of rent attendant on delay, costs, &c., of a civil action?

(*c*)—It will deteriorate the value of landed property, as the landholders will no longer expend capital under such conditions in the reclamation of land—*e.g.* jheels, jungles, &c.

4. That the possession of one hundred bighas of land will confer on the holder thereof the rights of an under-tenureholder seems to your petitioners unjust, because, as this proposal has a retrospective effect, it will take landholders by surprise. If intended for the future, it will be easily evaded. It is perhaps not unknown to your Honor that large tracts of land in this district have been brought into cultivation by landholders at their own expense, and have then been let out to ryots in blocks of more than a hundred bighas. This clause will operate very harshly on them, and your petitioners therefore beg that the custom which has so long prevailed should not be disturbed.

5. That under the 20th section of the new draft Rent Bill zemindars are deprived of existing rights, but the ryots will in no way be benefited by the privileges conferred on them. It takes away from the ryots the right to mortgage and the lotting of their tenures at public sales (which last is a great safeguard againt fraud), and bestows on them the right of private sale, which, in the opinion of every one experienced in the management of zemindaries, will inevitably tend to throw the tenants more helplessly into the clutches of the mahajuns.

6. That the protection given to ryots of three years' standing from arbitrary eviction for arrears of rents, with claim to compensation, will tend to prevent reclamation of waste lands. Thus your Honor is aware that during the first year land is partially cultivated, in the second year a scanty crop is raised, and at the close of the third year only the land may be said to be brought under cultivation. Should the proposed law be passed before the expiration of the third year the landholder, to preserve his rights, will dispossess the ryots. The effect of this clause will tend in many cases to encourage ryots to throw up their holdings and demand compensation, and thus ruin a great number of landholders.

7. That, as regards compensation generally, which the proposed law contemplates, it is a distinct infringement of the rights of zemindars under section 5, Regulation XLIV of 1793, which states "on sale for arrears of revenue all engagements with ryots shall stand cancelled from the day of sale, and the purchaser shall be at liberty to collect according to the established usages and rates of the pergunnah." In this law there is no allusion to compensation. Moreover, your memorialists submit that as most of the estates in this district have been purchased at *auction for full value after public competition*, to pay compensation will virtually be to repurchase land they have already paid for.

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8. That the proposed law is especially inapplicable to Backergunge, where there are so many tenures, and where the ryots are so inclined to withhold rents and form "jotes" (combinations), and your petitioners are convinced that the new Bill, if adopted by the Governor-General in Council, will do away for ever with the *régime* of zemindars, and at the same time seriously affect the condition of the ryots. It has, moreover, been stated by the Commissioners, and admitted by your Honor, that the condition of the Backergunge peasantry is prosperous. Your petitioners therefore consider any legislation as applied to this district unnecessary.

9. That the Commissioners, in the opinion of your memorialists, have entirely deviated from the original purpose of the Bill, which was to give the landholders improved means of collecting rents and the realization of public works and road-cess; but your petitioners find the Commissioners, so far from carrying out the intentions of the Government, propose to throw greater difficulties in the collection of rents.

10 That as regards the Bill generally, its provisions do not fall within the power reserved to the Governor-General to make laws for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil. Under this reservation of the Cornwallis Code, it could never have been intended that changes might be created radically affecting the status of the ryots and the proprietary rights of the zemindars; otherwise what is the meaning of Regulation XI of 1793, which expressly states "no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed or the value of landed property affected." Your memorialists therefore submit that the Commissioners have taken an entirely erroneous view of that reservation. If the authority thus reserved carried with it the power to create new rights in favour of the ryot without the landholder being a consenting party, the Permanent Settlement is a misnomer. Your memorialists are further of opinion that if this proposed Bill becomes law, the good feeling hitherto existing between the landlord and his tenants will be destroyed for ever. It will introduce an era of everlasting quarrels and feuds between the cultivating classes and their landlords, and open a wider door for litigation.

11. That in conclusion your memorialists, conscious as they are of the high fame which the British Government has for its unimpeachable honesty, uprightness, and good faith, feel convinced that your Honor, whose administration has been marked by high principles of justice and equity, will not sanction a law so biased, so one-sided, and so disastrous to the interest of the whole community. Your memorialists therefore beg that your Honor will be pleased not to allow the new draft Rent Bill to be presented in Council, and as in duty bound your memorialists will ever pray.

J. A. R.—Reg. No. 4629J—128—4-8-81.

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From

W. B. HUDSON ESQ.,

General Secretary to the Behar Indigo Planters Association,

To

The Hon'ble H. A. COCKERELL, C. S.,

Secretary to the Government of Bengal, Judicial and Political Departments,

Mozufferpore 21*st* *November* 1880.

Sir

In refrence to your communication No. 2329—1338, L. R. on the subject of the draft Bill to consolidate and amend the Law of Landlord and Tenant within the territories under the administration of the Lieutenant Governor of Bengal, I have the honor to tender our thanks to His Honor the Lt., Governor for having afforded us the opportunity of expressing our opinions upon it. We are hardly qualified to give an opinion on the theoretically correct and scientific arrangement of the Bill, or the deep research shown in the Report accompanying it but both compel our admiration.

2. *Distraint.*—We notice with pleasure that it is proposed to abolish Distraint in the New Bill. We believe that if a cheap, efficient, and summary procedure for the recovery of Rent be instituted; that both Zemindar and Rayat will eventually be much benefited, and that the only sufferers will be the rapacious underlings of the former. But, we also believe, that the procedure provided by the Bill will prove too complicated and expensive, and we are convinced that the present local courts will be utterly unable to cope with the business that will fall upon them, also that the inconvenience from distance alone will be harassing to both Zemindars and Rayats.

Knowing the abuses Distraint was liable to, we recommended its abolition, but only on the understanding that facilities for obtaining thier rents would be afforded to Landlords by a summary procedure on the lines of the proposed Bill for Bengal. This has not been done. Distraint has been abolished, but no procedure has been provided that will enable Zemindars to obtain their dues in a fair and legal manner. We as planters, are not so much interested for ourselves in this matter as there are large sums payable by us to rayats yearly which makes it easier for us to collect the balance; but to the ordinary Zemindar, a temporary combination of the rayats depriving him of his rents till he can get them by the legal process entailed by the usual procedure, would be ruinous.

3. *Fixed rates.*—The principle of conceding a right of occupancy at fixed rates because a rayat may have been permitted by his Landlord to hold land at an unaltered rate for 20 years, we consider to be wrong and unjust. The landlord who has treated his rayat well for 20 years suffers by it.

It is entirely against the custom of the Country. The quasi-communal right of a rayat to a portion of the land of his village is thoroughly acknowledged and understood by the people of Behar, but this right was justly restricted to land, for which he paid a fair rent, either in money or kind. The idea of fixing the demand for ever is the result of introducing English ideas into the legistation for the country, and is unsound in every way. More specially when the rent is payable in money, the value of which is so steadily depreciating. In most cases the result is that the reward of a Zemindar for having dealt considerately with his rayats for a certain period, amounts practically to a forfeiture of his right, as landlord, to obtain his proportion of the increased value of the produce.

It will also have the effect of obliging Zemindars to disturb long standing arragements with tenureholders and rayats which might otherwise continue for an indefinite period to the manifest advantage of the latter.

4. *Right of Occupancy.*—Especially for Behar we would suggest that instead of interferring with the present custom of the country which makes a right of occupancy heritable and transferable by sale or sublease, that a declaratory section confirming this be introduced.

5. *Ejectment.*—We also consider that the effects of the abolition of ejectment for arrears of rent will be—that landlords will be harassed by having to resort to legal proceedings to recover their rent annually, where rayat's rents systematically fall into arrear a state of things most common in this province; and it is certainly not to the rayats benefit to encourage him to trust to the landlord's disinclination to incur the inconvenience, expense, and above all delay of a civil suit, in which eventually he-the rayat becomes the heaviest sufferer.

6.—We would respectfully submit that the provisions in chaps. III & IV relating to rayats who have held land for three years or more and less than twelve, will make "confusion worse confounded", and will utterly ruin the relations that ought to subsist between Zemindar and rayat. We would from a landholders stand-point prefer that all resident or *khud kást* rayats, should be conceded occupancy rights in the lands they now hold.

7. *Registration of Resident Ryats,.*—The difficulty of defining a resident rayat might be met, by registering all the present ones, which can be done from the papers now in the collectorate, and for the future, providing that residence and occupation for a fixed period, would confer a resident rayats status.

8. *Planters grievances,.*—On our own part as planters we would bring to the notice of His Honor the Lieutenant-Governor the following points which will, we believe, affect our interests injuriously:—

(a)—That the provision that no occupancy holdings shall be saleable under any decree other than for arrears of its own rent, is a discouragement, and will practically prevent planters from entering into that much desired relation with rayats, which has been described as conducting their business on a commercial basis, as it will deprive them of their only security for the fulfilment of the contract on the part of the rayat, in the hope of which fulfilment the planter has to incur so heavy an outlay of capital not only in the cultivation of the crop, but also for the manufacture of the dye.

(b).—We notice that the provisions as to summary sale without decree under Chap XVI do not extend to the recovery of arrears from rayats, and are only available by proprietors of Revenue payable estates as against tenures, and do not apply to cases where the landlord is a Farmer or Landholder.

9. *General.*—We would earnestly draw His Honor's attention to the fact that no law that can be devised will be of any use to the people of Behar unless arrangements be made to obviate the heavy expense and delay of Rent Suits. It is these which now drive Zemindars to illegal methods of collecting their rents and unless they are removed these evils will continue. We would suggest that:—

10 *Suggestions for Court to try Rent Suits,*—Each District in Behar be divided into conveniently sized Sub-divisions and that a Munsiffi Court be established in each, the present number shold be increased fourfold. That a special Judicial Officer be appointed to each District to hear appeals in suits under the new Rent Law, and suppervise generally the Lower Courts.

Cheap Registration, (2).—That a cheap method of registration be provided—an office might be attached to each Munsiffi Court, and only the main point of documents such as situation extent, boundaries, period, rent, and date be entered. Facilities of this sort would soon cause the general introduction of *pattás* which the present expense and delay render impossible to most, Landlords.

In conclusion, although we are collectively the largest Landholder in Behar—we are also in many cases in the position of rayats, and our interests are identical with the true interets of both classes, and although our positions both as growers and manufactures of Indigo tends to warp our judgment on some points, yet appreciating the difficulties of the task before His Honor's Government, and its probable effect on the future of this province we have endeavoured to approach the subject without bais.

I the have honor to be,
Sir,
Your most obedient Servant,
W. B. HUDSON,
General Secretary,
B. I. P. Association.

FROM

THE MOHARAJAH OF BURDWAN,

TO

THE SECRETARY TO THE GOVERNMENT OF BENGAL.

Dated, the 9th May 1881.

SIR,

WITH reference to the Landlord and Tenant Bill I beg to submit the following observations for the consideration of His Honor the Lieutenant-Governor in Council:—

The law relating to putnee tenures has been incorporated in the Bill; but the framers of the Bill have not assigned any reason for so doing; and I fully agree with those who consider that the special provisions relating to putnee tenures ought to remain separate, instead of being incorporated in the general Code relating to landlord and tenant. More than half a century has elapsed since the passing of Reg. VIII of 1819, and the Commissioners, in their report, bear testimony to the fact that "the procedure is seldom abused," and "that it is extremely rare to hear even the allegation that a tenure has been brought to sale without arrears being *bonâ fide* due." Experience, however, shows the absolute necessity of certain amendments in the details without in any way altering the general features of the existing law. I therefore beg to suggest that Reg. VIII of 1819, and the several Acts amending the same, be consolidated in a separate Act, with such amendments as are required by experience and the altered state of things at the present day.

As to the registration of transfer of tenures, the framers of the Bill seem to be aware of the difficulties and inconvenience which zemindars have to suffer on account of the neglect of their tenants to register their names. Very frequently it happens that the recorded tenant is dead; but the zemindar, being not aware of the fact, brings a suit against him for arrears of rent, and after incurring all the expense of such a suit obtains an *ex parte* decree, which proves to be altogether ineffectual at the time of execution. The zemindar has then the only alternative of bringing a fresh suit against the party in possession; but by the time that he makes the discovery, his suit is generally barred by limitation. The proviso at the end of s. 174 in the Bill seems to be intended to meet this difficulty to some extent; but that proviso does not go so far as to declare that a decree can be passed against a person who is long since dead, and that such a decree, if passed, would be binding upon the party in possession. The Court, in the execution department, cannot make a decree binding on a person who is not a party to the suit, and who denies the fact of his having been in possession.

The only way in which the zemindar can compel putneedars to register their names in his sherista and to furnish securities, is to attach the tenure by sending a Sajwal. It has been ruled by the High Court, that the zemindar cannot bring a regular suit in order to compel putneedars to furnish securities and register their names. The zemindar cannot admit the party in possession to register, unless he

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furnishes security. Although the zemindar is entitled to attach the tenure when it is in the possession of any other person than the recorded tenant, yet what generally happens is, that the party in possession collects rents in spite of the attachment. The party in posssesion has the machinery for collection complete and in thorough working order. The attaching officer, even if he acts honestly, finds himself altogether powerless against the tenure-holder. The law does not expressly declare from what date the attachment should take effect; nor does it contain any provision enabling zemindars to bring suits for arrears of rent against ryots in an attached tenure. If the zemindar be entitled to bring such a suit, still, in nine cases out of ten, the ryot, in collusion with the putneedar, would plead payment to the latter, or being ignorant of the zemindar's order of attachment, and possibly his suit would be dismissed with costs, after all the expense which he has incurred and the trouble he has been put to. But even if he succeeds in getting a decree and in realizing the money, still, what does he gain after all. The expense and the trouble are out of all proportion to the advantage gained.

The law is extremely one-sided at the present time; while it enables tenure-holders to sue the landlord in Civil Court, in order to compel him to admit to registry and give effect to the transfer, all that the landlord can do to compel registration by tenure-holders is to attach the tenure. Under the circumstances set forth above it would be highly expedient for all parties concerned, if the law should provide for enabling zemindars to bring a suit against the party in possession of a tenure to register his name, and the party in possession be made liable for any damages which the zemindar may suffer for non-registration in his sherista of the tenant's name. The same reasons which led to the passing of the Land Registration Act apply also in respect of the relation between landlord and tenant, and the law ought to be at least equally stringent. The duties imposed on landlords and their tenants by the recent Acts of the Legislature render it absolutely necessary that the zemindar should know who his tenant is.

Section 49 of the Bill provides a penalty for non-registration within three months. The provision is a wholesome one; but as the precise date from which the period is to be counted is not distinctly specified in the Bill; difference may very often arise between the zemindar and his tenant as to whether the application is within time or not. The parties who are interested will have to decide all those complicated questions relating to the computation of time which arise in reference to the law of limitation. Neither the existing law, nor the Bill which is now under consideration, makes any provision as to what the zemindar should do in cases of disputed possession. Very frequently the zemindar cannot admit to registry the name of any particular person, for fear of a suit for damages by some other person.

As to the procedure for summary sale of putnee talooks for arrears of rent, the law requires that application should be made on the 1st of Kartic and 1st Bysakh. If these days fall on a holiday, then the application is usually presented on the next open day, according to Board's rules relating to putnee sale. This practice is not strictly consistent with the existing law; it is, therefore, necessary that the practice founded upon necessity should be recognized as legal. But if para. 2 of Board's rules relating to putnee sale be embodied in the law, then it would become necessary to provide, that the sale-notices may be published at any time within fifteen days from the day on which the petition for sale is presented. Under the existing law the sale-notices must be published before the 15th, even though the petition be presented on the 10th or 11th. It seems to be held by some that, practically, no inconvenience is felt, because complaints have been very rare. But if complaints have not been made oftener, the reason is that it is not in every year that the Collectorate remains closed from the 1st to 8th, 9th or 10th. It should also be remembered that a putnee

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tenure is very seldom actually brought to sale. In ninety-nine cases out of hundred the money is deposited on or before the sale-day. In the year 1874 the Collectorate closed on the last day of Assin, and re-opened again on the 11th Kartic, so that there were only three days for the publication of sale-notice; and many applications were struck off as the sale-notices were not published before the 15th Kartic. It should also be remembered that the sale-notice cannot be issued for service until the Collector passes an order on the Ashtam petition fixing the sale-day; but under the Board's Rules the Collector cannot fix the sale-day without taking the report of the record-keeper as to the applicant being the recorded proprietor. Although the law allows very little discretion to Collectors, with reference to the fixing of sale-day, yet it is never safe to publish sale-notices without knowing beforehand the day fixed by the Collector for sale. It very often happens that different Collectors fix different dates; so that sale-notices are always issued by the zemindar after the sale-day is fixed by the Collector. Last year, the Collectorate opened on the 5th Kartic, and as in some cases more than two days passed before the fixing of the sale-day by the Collector, there was hardly one week's time to serve the sale-notices, and the result was, that several notices were not served in due time; though practically no inconvenience was felt, because the putneedars paid their rent before sale-day. Although practically the inconvenience is felt only in those rare cases in which the sale actually takes place, yet the law should not require the zemindar to publish the sale-notice before the 15th, when the Ashtam petition is presented on the 11th or 12th as may sometimes happen. In a case reported in 1 I. L. R, p. 175, it was ruled by the High Court that the mere fact of the receipt of notice being dated the 15th, cannot amount to sufficient plea for setting aside a sale. One of the grounds on which the High Court arrived at this finding is, that the intention of the Legislature was only to give notice to the defaulter fifteen days before the day of sale. If such be the intention of the Legislature, it ought to be clearly expressed in the Acts, so that the difficulty above referred to, as to the service of notice before the 15th, may be obviated.

There is a marginal note to s. 135 in the Bill, from which it seems that, in the view of the authors of the Bill, proceedings for summary sale of putnee talooks ought to be taken in the months of Assin and Choytro. The instalments in which rent is payable by putneedars are generally regulated by agreement; and as, in most cases, the annual rent is payable in equal monthly instalments, the half-yearly rent cannot become due until the 1st Kartic. But if the sale takes place after the 1st Kartic, putneedars cannot have any reasonable objection if proceedings be taken a little too early. The first week of Assin or Choytro seldom falls within the holidays, so that if proceedings be commenced in those months, there would always be sufficient time for publication of sale-notices, and the zemindar would be enabled, before last day of payment of Government revenue, to realize at least, some portion of the money due to him from his tenants.

Under the existing law, applications for half-yearly summary sale can be presented either on the 1st of Bysakh or on the 1st of Kartic. If, owing to accident or any other cause, the zemindar is prevented from presenting the application on those days, then he has no other alternative than to bring a regular suit in the Civil Court. It would, therefore, be expedient, if the law provides that the application may be presented on the next succeeding day, if sufficient cause can be shown.

It sometimes happens that the Collector rejects an application for putnee-sale without sufficient cause; and his order is reversed by the superior revenue authorities after the day of sale. In such cases the usual practice is to sell the tenure on a day fixed by the Collector. This practice ought to be recognized by the law, or at least the zemindar should be allowed to include the amount in the next succeeding half-yearly sale. The law ought to provide expressly that a proceeding for summary

sale of a putnee tenure should not abate by reason of the death of the zemindar, and that such proceeding should be taken only against the recorded tenant, whoever he be.

The existing law requires that applications for putnee sale should be presented in the Collectorate within the jurisdiction of which the greater portion of land is situated. This is a source of great inconvenience to the zemindar. It is almost impossible, in many cases, to ascertain in what district the greater portion of land is situated. It would be highly expedient, both to the zemindar and to the putneedar, if the law provides that application for summary sale of putnee talooks should be made ordinarily in the Collectorate on the revenue roll of which the estate is borne; but the Collector, or the superior revenue authorities, may, for any sufficient reason, order that the sale of "any" particular tenure shall be held thereafter at any other Collectorate. This provision is absolutely necessary for the benefit of proprietors of large estates let out in putnee. Every Government Officer connected with revenue work must be aware how difficult it is to ascertain where a mouzah is situated; and if this difficulty is felt by Government Officers, with all the facilities for enquiry available to them, it can easily be conceived how difficult it is for the zemindar to ascertain not only the locality, but also the acreage, of a tenure situated in several districts. If any portion of the land happens to be the subject of disputed possession, then the difficulty becomes still greater, and the law requires the zemindar to do that which is impossible. The same difficulty arises in consequence of the law relating to the publication of the sale-notice. The existing law requires that the notice is to be published in the cutchery or in the principal town or village upon the land of the defaulter; but if there is no town or village upon the land, that is, if the land be covered by jungle or by water, how is the sale-notice to be published; how is the single peon by whom the notice is required to be served to know what portion of the jungle or the bheel is included in the tenure. The law requires that a copy or extract of such part of the notice as applies to the individual case shall be published at the cutchery or at the principal town or village upon the land of the defaulter; that the notice shall be served by a single peon, who shall bring back the receipt of the defaulter or of the manager for the same, or in the event of inability to procure this, the signature of three substantial persons residing in the neighbourhood in attestation of the notice having been brought and published on the spot. In case the people of the village should object or refuse to sign their names in attestation, the peon should go to the cutchery of the nearest Moonsiff. The law does not provide what the peon should do, if he does not know the identity of the defaulter or of his manager or of any substantial person residing in the neighbourhood; nor does the law provide what the peon is to do if the putnee tenure is sublet in ijrah or durputnee, s. 134, cl. (*d*) of the Bill distinctly requiring that the receipt should be signed by the defaulter's gomasta. Although illustration (*c*) in s. 136 of the Bill obviates these difficulties in a great measure, still it must be remembered that it is almost impossible to prove the fact of publication unless the receipt is signed. Generally it happens that the zemindar's peon does not know the identity of the gomasta; so that the receipt is signed not by the gomasta, but by a subordinate mohurir writing the name of the gomasta. How is the peon to know whether the man signing the receipt is the gomasta or not. He can at best inquire whether the gomasta of the village, if there is any, bears the name signed on the receipt. The peon cannot presume to call upon the person signing the receipt to prove that he is the gomasta, and that he has signed the name which he himself bears.

Illustration (*b*) in s. 136 renders it absolutely necessary that the sale-notice should be published at the cutchery or at the principal town or village on the land of the tenure; but there may be cases in which there is no town or village on the

land, nor has the putneedar a cutchery to transact business (14 W. R., p. 38). In such cases it is impossible to publish the notice according to law.

It is difficult to understand why publication of the sale-notice on the spot is considered essential to the validity of a putnee-sale. A sale in execution of a decree is a casual affair; and it is absolutely necessary that, in execution-sales, the publication of the notice should be insisted upon. But putnee-sales are periodical. Every one ought to know that the tenure may be brought to sale by the zemindar, on the 1st Jeyt and Agrohayon, if the arrears be not paid in time. Whether the sale-notice is duly published or not, numbers of purchasers attend the Collectorate on the sale-day. Still, if it be thought necessary that additional facilities should be given to every one to ascertain whether the zemindar has taken any proceeding for recovering the rent due to him, then all that the law ought to require is, that the sale should be advertised in the Government *Gazette;* and if the putneedar so desires, then a copy of the notice to be sent to him by post or by a peon to the address mentioned in his application; no sale to be set aside for a mere technical defect in the procedure, unless the zemindar acts fraudulently or with gross negligence, and unless the putneedar suffers loss as a direct consequence of such fraud or negligence, the burden of proving which should be upon the putneedar. If the law be modified in this way, the putneedars would rather gain than lose, as their tenures, if brought to sale, would fetch higher price.

The law relating to the publication of sale-notices is the source of the greatest trouble, injustice, and loss to the zemindar. Formerly, it used to be held that it is absolutely necessary for the zemindar to observe all the forms prescribed in the law, and that the slightest departure from these rules would invalidate the sale. But it is now established that the publication of the notice on the land is essential, and that the other provisions are merely directory. The ruling laid down by the High Court in 9 W. R., p. 242, and approved by the Privy Council in *Ram Sabuck Bose* v. *Monmohini*, has been adopted in the Bill. But still it is difficult to understand why a sale should be set aside, simply on the ground of irregularity, unless the putneedar can prove that he has suffered loss in consequence of that irregularity. In *Gour Lall* v. *Judistir Hajrah*, 25 W. R., p. 141, Mr. Justice Mitter pointed out that publication of sale-notice on the land is required by the law, because important privileges are given to undertenants, and it is necessary that they should have notice as well as the putneedar. If this be the reason why publication of the sale-notice on the land is insisted upon, then a sale ought not to be set aside simply on the ground of non-publication of notice on the land, unless the putneedar shows that his tenure would have been protected from sale by undertenants, if the sale-notice had been published on the spot. If it is proved that the recorded tenants had notice of the sale, and that there were sufficient number of bidders at the sale, there is no reason why it should be set aside, simply because the sale-notice was not published on the spot. If an undertenant suffers any loss, he ought to have his remedy against the putneedar who wilfully allows the tenure to be sold. There is no reason why any one but the recorded tenant should be allowed to bring a suit for setting aside a sale; and the wording of cl. 6 of s. 136 of the Bill ought to be so modified that it may not be open to any person to bring a suit for setting aside a sale. Even if persons other than recorded tenants be allowed to bring such suit, there is no reason why the zemindar should be made liable for cost and damages when the sale is set aside on the ground of irregularity, and not on the ground of there being no arrear. There is no privity between the zemindar and the putneedar's undertenants; if the zemindar sells the tenure when no arrear is due, he may be made liable for cost and damages; but if the putneedar, with full knowledge, allows the tenure to fall in arrears and be sold, there is no reason why the sale should be set aside at the instance of any other person; nor is there any reason why the zemindar should bear all costs and damages

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when such a sale is set aside for irregularity, at the instance of any person other than the recorded tenant. In a recent case it was observed by Mr Justice Maclean, that "the putnedars in the Burdwan Raj know very well that there is generally no neglect to bring the putnee tenures to sale on the appointed day;" and further on, "that it is as certain as Agrahyan follows Kartic, that a sale would take place if rent is due, *and there were numerous methods for the acquisition by plaintiff of knowledge that the sale would take place beside the affixing of a notice at Salmobla,* and the owners might be credited with the knowledge that as they had certainly not paid their rent, they must do so to save the sale." In that case it was at least proved, that the putneedars had full notice of the proceedings under Reg VIII of 1819; in fact, in the opinion of Mr. Justice Maclean, it was not necessary to prove that point; still the sale was set aside on the ground that the zemindar failed to prove the publication of notice on the land, though the learned Judge of the lower Court held otherwise, and though the putneedar did not prove that he suffered any material loss as a direct consequence of the nonpublication of notice on the land.

In the well-known *Kumul Chuck case*, the putneedars were prevented from paying the money in due time in consequence of a railway accident. The money was brought to the Collector; but he refused to accept payment, as it was too late at the time when the tender was made. The tenure was sold by the Collector, and the sale has been set aside by the lower Court, on the ground of nonpublication of notice on the land, the zemindar being made liable for full costs and damages at the rate of 12 per cent on the purchase-money, as if it was his fault that the railway accident took place, or as if he was to blame, because the manager of the putneedar waited till the last moment. The auction-purchaser purchased the tenure with full knowledge of all the circumstances; and yet the Court has awarded damages in his favour under s. 14 of Reg VIII of 1819, at a rate which would cause the ruin of an ordinary zemindar. What right has the auction-purchaser to claim any damages when he purchased with full notice of all the circumstances. Nothing could be more unjust than that, when a sale is set aside, the zemindar should be made liable for costs and damages sustained by the auction-purchaser in every case. In the hearing of the case, or at any subsequent stage, the zemindar is not allowed an opportunity to show cause why he should not be made liable for the cost and damages sustained by the auction-purchaser; no issue is framed to that effect; no evidence taken; still, when the sale is set aside, the zemindar is made liable for costs and damages not only of the plaintiff, but also of his co-defendant, the auction-purchaser.

In a recent case, a putnee tenure was sold in a Collectorate which had no jurisdiction. A suit for setting aside the sale was brought, the zemindar saw that it would have been altogether useless to put in a defence; and called upon the auction-purchaser to restore the mehal to the last owner, and accept payment of interest on the purchase-money, which accrued due up to date. But the purchaser refused to do so, and plainly stated that he knew full well it would be useless to contest the case. In spite of that he would not agree to the proposal; and contested the case in the hope of obtaining not only the interest due on the purchase-money, but also full costs, including vakeel's fees; and as a vakeel may be induced to file a defence for the nominal sum of one or two rupees, he expected, by contesting the case, to be gainer to the extent of the vakeel's fees which would be awarded. In such cases can it be just to pass a decree for damages in favor of the auction-purchaser without hearing any objection on the part of the zemindar. Very frequently the auction-purchaser contests the case from first to last; and if ultimately the sale is set aside, then the zemindar is saddled with his costs and damages. A decree-holder who sells the property of his judgment-debtor is not made liable to the purchaser for damages when the sale is set aside; why then should the zemindar be liable for damages to the auction-purchaser of a talook sold for arrears of rent. When Reg. VIII of 1819

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was first passed into law, it was absolutely necessary to give every inducement to attract purchasers. But proceedings under Reg. VIII of 1819 have now become a regular institution in the country. On the 1st Agrahyan and Jeyt, a large number of purchasers regularly attend the Collectorate, and bid for tenures which are brought to sale. Putnee tenures sold at what is called Austum sale generally fetch a high price; and putneedars would, in the long run, rather gain than lose, if sales under Reg. VIII of 1819 be not set aside on mere technical and frivolous grounds. Now that Reg. VIII of 1819 has been in force for so many years, it is no longer necessary to make the zemindar suffer for the benefit of speculative purchasers. If the zemindar sells a tenure notwithstanding there being no arrears, then the zemindar may be made liable for damages to the purchaser. But there is no reason why the zemindar should be liable to the purchaser for damages in every case without any adjudication whatever. If the law abhors multiplicity of action, there ought to be at least a separate proceeding, before the Court awards any damage to the auction-purchaser.

From the wording of s. 14, Reg. VIII of 1819, which has been adopted without modification in cl. (*b*) of s. 136 in the Bill, it does not appear to have been the object of the Legislature that a sale should be set aside on a mere technical ground. Section 14 of Reg. VIII of 1819 provides, that it shall be competent to any party desirous of contesting the right of the zemindar to make the sale, whether *on the ground of there being no balance due or on any other ground*, to sue the zemindar for the reversal of the sale, and upon establishing a *sufficient plea*, to obtain decree with full costs and damages. The meaning of general words must be controlled by particular words; and it seems to me that the object of the Legislature was, that a sale under Reg. VIII of 1819 is to be set aside only if the zemindar brings a tenure to sale without having right to do so. But it has been ruled by the High Court and the Privy Council, that publication of notice of sale on the land of the defaulter is essential; and that ruling has been adopted in the illustrations to s. 136 in the Bill. It is, however, doubtful whether the illustrations are in accordance with the wording of the section; nor are the illustrations exhaustive, so that even with the light of the illustrations it would not be possible to determine, in all possible cases, whether a sufficient plea is established. In illustration (*b*), *A*, *B*, *C*, joint owners of a putnee, bring a suit for reversal of a sale; *A* and *B* are proved to have been served personally, but it appears that no notice was published on the land. In this case, according to the illustration, a sufficient plea is established. But the question yet remains what would be the result if the notice be served on all the joint owners personally, and the putneedar fails to prove that they sustained any damage for non-service of notice on the land. In such a case it would be absurd to hold that a sufficient plea is established. When the defaulting putneedar admits, or when it is found that he had full notice of the proceeding, a technical plea such as non-service of notice on the land can by no means be held to be a sufficient plea, especially when it is also found that the defaulting tenant sustained no loss as a direct consequence of the irregularity.

For reasons already stated the following amendments are suggested:—

SECTION 48.

The zemindar should not be bound to register the transfer unless the transferrer pays the whole amount of arrears due from him up to date of application for transfer.

The tenure ought to remain hypothecated for back arrears. When an application is made for registration of a transfer in the middle of a month or kist, or when a sale in execution of a decree is confirmed in the middle of a month, there ought to be some rule for apportioning the rent payable for the kist, between the out-going and in-coming tenant.

SECTIONS 49 & 50.

What is the zemindar to do in order to compel a co-sharer to register his name.

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The provisions contained in this and the following sections are wholly inadequate for the purpose for which they are intended.

Though the transferer remains liable, unless the transfer is registered, yet the zemindar cannot get a decree for arrears of rent when the transferer is dead. It has been also shown, that the zemindar has very little to gain by attaching a tenure; what is absolutely necessary is, that the landlord should have the right to bring a suit for damages which he sustains in consequence of a transfer or succession not being registered in his sherista.

None but a recorded tenant should be allowed to bring a suit for arrears of rent due from undertenants.

SECTION 53.

The zemindar ought to be entitled to bring a suit against putneedar for furnishing security.

CHAPTER XVI, SECTION 134.

It would be better if Austum proceedings be taken in Choitro and Assin, instead of Bysakh and Kartic.

The following explanation ought to be added to s. 134, cls. (*a*) and (*b*).

1. If the first day of Bysakh happens to fall on a holiday, then the petition may be presented on the next open day.

2. If the zemindar is prevented from presenting his petition on the required day, then he may present the same on the next succeeding day, if sufficient cause be shown.

For reasons already stated the following ought to be substituted for cls. (*c*) and (*d*):—

A similar notice, or such portion of it as applies to the individual case, shall be sent by post or peon to the address of the recorded tenant, his gomasta, or undertenant, if the recorded tenant, by written application to the zemindar, before the day on which the proceedings are commenced, requests that such notice be so published. The sale-notice shall also be published in the Government Gazette and in such local newspapers as the Collector may direct.

The following clause ought to be added after cl. (*b*) in s. 136:—

No sale should be set aside except (1) on the ground of there being no arrears, or (2) on the ground of the proceedings being taken in a Collectorate having no jurisdiction, unless the zemindar is proved to have acted fraudulently or with gross negligence, and unless the putneedar suffers any loss as a direct consequence of such fraud or negligence.

In cl. (*b*), s. 136, the words "recorded tenant" ought to be substituted for "any person." Clause (*c*), in s. 136 ought to be omitted; and the word "purchaser" added after the word "zemindar" in cl. (*b*). If the purchaser contests the case, he does so as a speculation; and he has no right to costs. He can at most claim damages for the period of one month after the day of sale. In this section there ought to be some provision for apportioning rent payable in respect of a putnee tenure, when a putnee sale is set aside, so that there may be no doubt as to respective liability of the sold-out putneedar and the auction-purchaser.

In illustration (*a*) the following words ought to be added at the end;—"and it is proved that the putneedar suffered loss as a direct consequence of such irregularity."

For illustration (*b*), the following ought to be substituted:—

A suit is brought by the recorded tenant for the reversal of a sale, on the ground that the sale-notices were not published in the manner required by law, the putneedar alleging, that if the notices had been duly published, then the amount due would

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have been paid by some undertenant, or that some other person would have purchased the tenure at a higher price. If all these allegations be proved, then a sufficient plea is established.

In s. 137 there ought to be express provision enabling the zemindars to appeal to higher revenue authorities, if the award of the Collector is against him; and if the order of the Collector is reversed in appeal, then the zemindar ought to be entitled to include the arrears in the next half-yearly sale.

In s. 143, cl. (*b*), the word "shall" ought to be substituted for "may."

In cl. (2), s. 145, the wording ought to be so changed that the demand of the zemindar for back arrears may be the first charge on the balance of purchase-money, provided the zemindar institutes a suit for such arrears and obtains an order to that effect within a certain time. Now that even putneedars are allowed to deposit the balance due in the Collectorate, it is necessary to provide clearly what amount of cost the zemindar is entitled. The zemindar has to retain a revenue agent, and also a set of mohurirs, to do all the work in connection with certain proceeding. The zemindar has also to keep a large establishment of peons to serve the sale-notices, and the costs ought to be allowed to the zemindar on such a scale that he may not have to suffer for the default of his tenants.

The wording of cls. (1), (2), and (3), in s. 146, ought to be altered, so that a sale of a putnee, held in a Collectorate, on the towzee of which the estate is borne, may not be void, on the ground that the tenure is situated wholly beyond the jurisdiction of such Collectorate.

In cl. (*b*), s. 139, there ought to be some rule for determining the priority as between the lien of an actual mortgagee and a salvor's lien.

In s. 141, cl. (*a*), the wording in the first three lines should be altered, so that a tenure may be ordinarily sold in the Collectorate on the towzee of which the estate is borne. But the revenue authorities should have the power to order that the sale should be held in the Collectorate within which the tenure or any portion of it is situated.

Arrears of dak costs ought to be allowed to be included in a petition for Austum-sale. Almost all the putneedars are bound by their kabuliat to pay dak costs; but the amount is generally small, and the cost involved in obtaining a decree in the Small Cause Court, and in executing the same, sometimes exceeds ten times the amount of the demand. Ultimately the burden falls in a great measure upon the putneedars; but the trouble and expenditure to which the zemindar is put are so great as to deprive him practically of the only advantage of letting out a zemindary in putnee. To institute the petty suits for dak costs he has to keep up a large establishment of amlas; he has also to keep a mooktear in every Moonsiff's Chowki where there is a putnee tenure. Now that imperial post offices are established in all parts of the country, it is inconceivable why zemindars should be made to continue to pay dak costs. Under s. 4 of Act VIII of 1862, no line can be maintained from the zemindary dak fund between places in which there are imperial post offices. But as a matter of fact almost all the lines which are maintained out of the zemindary dak fund are between places in which there are Government post offices. Now that the road and public work cesses are being levied upon zemindars, it would be some relief if the zemindar's dak be abolished. But if it is at all continued, then it is absolutely necessary, in the interest of both the zemindars and putneedars, that arrears

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of dak costs, like road cess and public cess, be allowed to be included in the petition for Austum-sale. The interest of the putneedars will be sufficiently protected if it be provided that no sale should take place for arrears of dak costs only, and that when a putneedar deposits the rent due from him, he must also pay the arrears of dak costs claimed by the zemindars, or make a petition to the Collector stating that he is not bound to pay dak costs.

In Chapter IX, the proviso in italics at the end of s. 56, will prove to be a source of some complication; and, as it is not absolutely necessary, it should be omitted.

Putnee tenures ought to be excluded from s. 57. It may be beneficial both to the zemindar and the ryot if receipts be given and counterparts kept as required by s. 57. But in respect of putnee tenures such provisions are altogether unnecessary.

In s. 57 there ought to a clause for the benefit of the zemindar, similar to cl. (*b*), which is for the benefit of the tenant. Very frequently it happens that the arrears due from a ryot or tenant have been already collected. But the gomasta, in the papers submitted by him, conceals the fact; the ryot is not bound to disclose his accounts; he does not even appear before the succeeding gomasta, or Tumar Ameean, especially if he be of the party of the former gomasta. A suit for arrears of rent is instituted, and ultimately dismissed with costs; by this time the period of one year, within which a suit for accounts must be instituted against a gomasta, has expired, and the money is gone for ever. In large estates, especially it is absolutely necessary to inquire into the state of account of the ryots at stated periods; and there ought to be some provision for enforcing the compliance of ryots to exhibit their dakhilas.

The change proposed to be effected by s. 61 in the law relating to the deposit of rent will prove to be source of great inconvenience and loss to the zemindar. There are many zemindars, tenure-holders, and undertenants who have no regular agents in every Court; or even if they have, such agent may be absent from station, so that if s. 61 of the Bill be passed into law, the zemindar will have to bear the cost of the notice in nine cases out of ten.

The framers of the Bill are aware that the facility afforded to tenants of depositing their rent has been abused to a certain extent. The fact is, that the privilege given to the tenants is abused by them in the majority of cases. Very few ryots know that they must tender payment to the zemindar or his agent, before the rent can be deposited. The ryot falls out with the zemindar or his amla, or some village mooktear advises him that he can make his jote a mokurari one and protect himself from enhancement by depositing rent in the Collectorate; and the ryot is made to subscribe to a petition containing all the allegations required by law, while he is perfectly ignorant of the nature of those allegations. The provision which the framers of the Bill have made to prevent such abuses will be found to be wholly inadequate, while the provision contained in s. 61 will encourage such abuses. It seems that the business of the Collectorate will rather increase than diminish by this change in the practice. In s. 60 there ought to be a proviso declaring that a misdescription as to the nature of tenure, contained in the petition for deposit of rent, shall not affect the zemindar, and that if a deposit is made without sufficient cause, the zemindar may institute a suit for arrears; and if in such a suit the ryot pleads previous tender and deposit, and fails to prove his allegations, then the zemindar ought to be entitled to a decree with full costs and damages.

Section 64 of the Bill, with s. 207, cl. (*b*), would, if passed into law, be a source of grievous injustice to the zemindar. An occupancy ryot has the right to

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relinquish his holding. This of itself is a great injustice to the zemindar. The zemindar cannot put an end to the relation of landlord and tenant existing between him and his occupancy ryots; but the ryot can, at any moment, relieve himself from his contract by relinquishing. It would be a still greater injustice to the zemindar if in executing a decree for arrears of rent, the zemindar be, in the first instance, compelled to proceed against the tenure, and to purchase the tenure if there be no other bidder. If the object be to relieve the tenant from the express terms of his contract at any time when it ceases to be profitable, it would be much better to provide that not only ryots, but even superior tenants, may relieve themselves from their obligation by relinquishing their tenures, thus making the contract binding only on the zemindar. If it be thought fit to deprive the zemindar of the vested right which he has by contract, it should be done openly by giving tenure-holders the right of relinquishing, instead of compelling the zemindars to incur all the costs of proceeding in execution against the tenure, and then to purchase it against his own will.

The remarks made above have reference only to putnee and other tenures of a permanent nature. As regards the changes proposed to be made in the law relating to occupancy ryots, it is not necessary to make any remarks at present. The so-called rent question is one between landholders and cultivators of the soil, and it will take a long time before that question is satisfactorily settled. But the interest of the cultivators of the soil is in no way affected by the law relating to putnee tenures. I am of opinion that the several Acts and Regulations on the subject ought to be consolidated at once in a single Code, with the amendments proposed above. I, therefore, refrain from making any remarks in this memorandum with reference to enhancement and other questions relating to occupancy ryots.

I have the honor to be,

Sir,

Your most obedient servant,

Moharaja of Burdwan.

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To—The Hon'ble Sir Ashley Eden, K.C.S.I., Lieutenant-Governor of Bengal.

The humble memorial of the undersigned
landholders of District Chittagong,

Most respectfully sheweth.

1. That your memorialists have observed with great interest and anxiety the proceedings of the Rent Law Commission and the Draft Bill amending the law relating to landlord and tenant, and most respectfully beg to lay their humble observations on the subject, for Your Honor's favourable consideration.

2. That the object of the new Rent Bill in the humble opinion of your memorialists ought to be threefold: (*a*) to simplify the procedure in rent suits; (*b*) to lay down some practical and feasible scheme for a reasonable enhancement of rent; and (*c*) to make provisions for securing the landlords and tenants in the enjoyment of their respective rights and privileges without molestation from each other.

3. The Draft Bill, in the humble opinion of your memorialists, fails to secure these ends. The summary procedure for the realisation of arrears of rent has been omitted, and the landlord whose estate is sure to be put up to sale for non-payment of a farthing of revenue on the kist day will have to realise his arrears from a recusant tenant by the tedious process of law suits in civil courts, while the powers of distraint and eviction for non-payment of rent which the landlords have enjoyed for a long time, at any rate since Act X of 1859 was passed, have been done away with.

4. The reason why the power of distraint has been taken away is because it has been abused, but the existing law entailed a heavy penalty for such abuse, and to say that a thing may be abused is in the humble opinion of your memorialists no argument why it should not be legitimately used.

5. If the produce of the land be not hypothecated for rent, itinerant and paikast tenants may successfully evade payment of rent, and render all decrees obtained by landlords for arrears of rent fruitless and unavailing.

6. The conviction that in cases of non-payment of rent after decree the ryots will be evicted from their holding, afforded a strong motive for the punctual payment of rent, and in cases of tenants willing to discharge their obligations it could not be a matter for complaint. Your memorialists observe with regret that a measure so suicidal to the rights of property could be contemplated while a Bill for the suspension of eviction for a temporary period in Ireland has been so recently rejected by the House of Lords.

7. Your memorialists observe with deep concern that while the Bill takes away these two important privileges from the landlords without giving them a suitable and speedy procedure for realization of arrears, it creates new rights in tenants which they have never enjoyed, and which in the humble opinion of your memorialists are utterly subversive of the rights of property.

8. Such are the definitions of land, occupancy ryots, ryots, talukdars, &c. The Commissioners profess to have acted on the rulings of the High Court, but if these were duly consulted and borne in mind they would not have included in land, lands used for building purposes; they would not have conferred occupancy rights on middlemen and sub-ryots; they would not have made such rights transferable irrespective of custom, nor allowed tenants to erect pucca buildings, to excavate tanks, and to cut down trees, without the consent of the landlords. The growth of big trees renders the lands covered by them unfit for cultivation for a series of years, and if a tenant could cut them down and then quit his holding, the landlords would not be able to let it for a long time to come.

9. Parties who have taken leases for more than 100 bighas are to be styled talukdars, but in a district like Chittagong, the majority of landlords scarcely hold more than 100 bighas and this number of talukdars answering the definition could be numbered.

10. Your memorialists further beg to observe that, while the Commissioners have not hesitated in taking away from the landlords powers which they have enjoyed since Act X of 1859 came into force, they have retained the presumption arising from 20 years payment of rent at a fixed rate, on the sole ground that it has been long enjoyed (*i.e.* since Act X came into force), and doing away with it would interfere with vested rights. But most of the measures advocated by the Commissioners interfere with vested rights of landlords, rights enjoyed for no less a time, acquiesced in by all parties, and confirmed by a series of decisions. This is not logically consistent.

11. The law of presumption is a branch of the law of evidence, and has been dealt with in its proper place. A rent law is not the proper place for dealing with it. Specially where it subverts the ordinary canons relating to the burden of proof.

12. The rates of 50 per cent. limiting the rent payable in kind (section 21), the limit of a quarter of the annual value of produce laid down in section 23, are entirely new. These

sections, in the humble opinion of your memorialists, interefere with the rights of free contract existing in all civilized countries; and if these limits are adhered to in Chittagong, instead of any enhancement cases our courts would be flooded with suits for abatement of rent. In most of the estates, the existing rates paid by the tenants are higher than the limits recommended by the Commissioners, and in many estates the Government dues payable by the landlord (Rs. 16 to 24 per drone besides the cesses), exceed a fourth of the value of the annual produce. Besides, the value of the produce could not be fixed with precision, and these provisions instead of curtailing would only increase unprofitable litigation. The same remarks apply to the profit of 30 per cent. besides collection charges allowed to talukdars who under the old Regulation 5 of 1812, section 8, and a long course of decisions, have been only allowed 10 per cent.

13. Sections 26 to 35 are entirely new. In the humble opinion of the undersigned, they vest rights in persons who have none, at the expense of the landlords who are required to make compensation for works done without their permission or authority. These provisions, your memorialists submit, are most oppressive, and will naturally decrease the value of revenue-paying estates. Even under the existing laws, a ryot's jote sells at a higher value than the corresponding proprietary right, and lands tied down with so many subordinate rights will scarcely find buyers.

14. The fee allowed for the registration of transfers is, in the humble opinion of the undersigned, exceedingly low, and should be calculated not on the rent payable but on the value of the land, for the higher the rent the less will be its value and *vice versa*. The custom in this district is, that the landlord gets a fourth of the purchase money.

15. Your memorialists also most respectfully beg to observe that the registers and books required to be kept by the Draft Bill are too expensive for a district like Chittagong, where there are so many petty landholders that a person owning five gundas of land pays revenue to Government and is a zemindar.

16. Section 79 requires that a year must elapse since the abandonment of land by a previous ryot before it can be let to a new one. Your memorialists are at a loss to understand from whom this year's rent is to be realized. Section 80, allowing an evicted tenant his crops, is against the rulings of the High Court.

17. No reason has been shown for limiting the time for the cancellation of incumbrances to one year; practically this section would be inoperative, as in the case of a tenure sold in the beginning of the year, no suit for annulling under-tenures could be commenced until after notice on the under-tenants in the end of the year, and more than a year would elapse before such suits could be instituted.

These are a few of the objections which in the humble opinion of the memorialists the Draft Bill is open to. In presenting them, your memorialists beg that they may meet with such consideration as they deserve, and in conclusion they most respectfully pray that in the interests of justice and of landlord interest generally, the Bill in its present form may not become law.

20th November 1880. Signed by 87 Zemindars and Talookdars.

N. T. W.—Reg. No. 11808J—182—12-2-81.

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MEMO

ON

THE BENGAL AND CENTRAL PROVINCES RENT BILLS.

The great hardships to which the people of the various provinces of this empire have been subjected within the last few years on account of the deficiency of rainfall, ought I think to bring home the truth to us, that it is necessary to make our arrangements for irrigation independent of the perennial supply of nature. The great strain to which the finances of this country have been subjected by the famines, which have devastated at various times the province of Bengal, the Presidencies of Bombay and Madras, the North-Western Provinces and Oude during the last decade, has well-nigh reduced this vast empire to the brink of insolvency; and if we have to face the same difficulty again within the next ten years, it would be extraordinary if the result is not a financial collapse: unfortunately, however, there is no reason to expect that we shall enjoy any immunity from this great scourge for the next ten years. The finances of the country, it is admitted on all hands, are already in a critical state:—the Government has exhausted all its sources of revenue, and any further taxation under the present impoverished circumstances of the country is simply out of the question, and would seriously endanger the stability of Government; it does not appear therefore how our Government will be able on the next emergency to meet the great drain on its finances caused by famine, considering specially, that even its ordinary revenue is necessarily in a paralyzed and crippled state during such a period; and if any of the enemies of the British Government chose that moment for the declaration of war, the prospect is scarcely pleasing to contemplate. These considerations irresistibly lead to the conclusion that we cannot lose a moment in making arrangements for an artificial supply of water, which may safely be relied upon to mitigate considerably the hardship at present inflicted by the least failure in the perennial rainfall. The Famine Commission has already decided in favor of wells, and on this point its recommendation has the concurrence of all whose opinion is entitled to any consideration. The Government of India cannot, however, be reasonably expected in the present state of the finances to undertake any gigantic scheme of well-sinking, for it would involve an outlay of money which the Government of India shall not be able to afford for many years to come. Such an undertaking on the part of Government is also objectionable on other grounds, not the least of which is that by doing so, it would afford such a favorable opportunity for the misappropriation of public money that the subordinates of the Public Works Department cannot be expected to neglect it. The only duty of the Government of India therefore is to give an impetus to well-sinking on the part of private individuals, by removing all obstacles which prevent private enterprise from having fair play; and I think it can do this most efficiently and successfully by effecting a slight reform in the land laws of this Empire. The Government of India has already under its consideration Rent Bills for two of the provinces, and it is this fact which has induced me to trespass on its attention with these remarks, as a little alteration in the provisions of these proposed enactments, would secure the object which all must admit to be desirable.

The Bills to which I have referred in the last paragraph, provide for the grant of compensation for improvements when the tenant who made the improvement is sought to be evicted; but I would submit that these provisions do not go far enough, and cannot possibly have the effect of encouraging the construction of wells or other works for the storage of water on any extensive scale. The draft of the Bengal Bill awards compensation only to such tenants who have been in possession for three years or more; why those who have been in possession for less than that period have been denied this privilege does not appear, there being no reason why the tenant who immediately on getting possession of the land let to him has commenced improvements, should be deprived of this protection for the capital invested by him. The Bengal Bill further provides that the

amount of the ryots compensation in respect of an improvement shall be the sum laid out by the ryot on the improvement, with a deduction of a proportionate part thereof for each year, while the tenancy endures after the year of tenancy in which the outlay is made, and while the improvement continues unexhausted. This provision is not very lucid; but if it is intended that the profits made by the ryot from the improvement during the period that he enjoyed it are to be deducted from the amount spent by him, it cannot be too strongly objected to. To enact such a rule would be as equitable as to hold that, money paid as interest ought to be credited towards the payment of the principal. The unfortunate ryot has himself as a rule to pay extortionate and usurious interest, and it would be simply unjust to lay down that any little profit made by him from his investment ought to be credited towards the part payment of his capital. The provisions of the Central Provinces Bill are still more objectionable, in requiring that a tenant desiring to make an improvement shall give notice thereof to the landlord who has a preferential right to make them. The provision in question, which is incorporated in Section 39 of the Bill published, no doubt reads very logical, and equitable as it stands, but I suppose it would not be too much to ask our legislators to take into consideration the condition of the people for whom they are legislating. The great reproach made against Indian legislation is, that it is too often framed exclusively with reference to juridicial theories or logical symmetry irrespective of how it may operate on the people to be governed by it under the peculiar circumstances surrounding them; and no piece of Indian legislation lends greater countenance to this criticism than the section in question would do, if it receives the force of law. A provision like this pre-supposes a certain amount of education on the part of the tenantry to be governed by it, while the *sine qua non* to its success is that the landlord should be actuated by the purest benevolence and philanthropy unalloyed by any selfish consideration or baser motives. How far we have these necessary conditions at our disposal is a fact patent to all in respect of which there is not much room for difference of opinion. In the meanwhile it may be remarked that in the absence of these, this provision would afford a good engine to the landlord to do the tenant out of his hard-earned savings; for if the notice is required to be in writing, we may pretty safely reckon that ninety-nine per cent. of the improvements would be made without such notice, the tenant not having the necessary knowledge to comply with the requirements of the law, even if he was acquainted with its provisions to do so. If, however, a written notice is not insisted on, it would open such a room for hard swearing, that the landlord who has such means of commanding the necessary evidence is sure to come off with flying colors from the contest. Granting, however, that the Indian agriculturist has sufficient intelligence and knowledge to be able to comply with this provision, it does not appear what good it would do to him if he followed this procedure; for the reply of the landlord would not be an offer to make the improvement for him, or a permission to the tenant to make one for himself; but is sure to assume the form of a notice of ejectment which would have the efficacious result of silencing not only the tenant whose ambition was directed towards the improvement of his holding, but also his neighbours. Under these circumstances it would invariably happen that whenever the tenant stands in need of making an improvement, he shall find it necessary to place himself at the mercy of his landlord by making the required improvement, without going through the legal procedure of throwing the gauntlet to his landlord by issuing the necessary notice. In view of these considerations one cannot but characterize these compensation clauses of the Central Provinces Bill as mere mockery and delusion.

Even if all the objections noticed above could be got over by necessary amendments, I am sure the compensation clauses in these Bills would fail to give the requisite encouragement to the construction of wells, for the concessions made thereby are not adequate and do not afford complete relief. The hope which operates as a stimulant on the agriculturist is that of enjoying the use and profits of the work constructed by him, and not that of getting their money-value when they are ready and in working order. No law would therefore succeed which does not assure him this, the principal object of his hopes and aspirations. I would beg therefore respectfully to suggest that a tenant making a permanent improvement in the shape of a pukka well or other work for the storage of water should, in respect of the lands irrigated therefrom, be guaranteed fixity of tenure, similar to that conceded to tenants

holding for 1 2 years. The exchequer of the ordinary Indian ryot is not overflowing with cash, and there is not much margin left to him by his landlord to enable him to make a decent saving. To construct works of irrigation, the poor tenant has to deny himself even those trifling luxuries which make their way to the desolate homes of the Indian peasantry, has to live on the scantiest meal on which human life is barely sustainable, and has further, notwithstanding these great sacrifices, to borrow money on exorbitant interest to be repaid by still larger sacrifices. It would be astonishing if under these circumstances he underwent all these great privations and sacrifices with no ulterior hope, except that when his landlord takes it into his head to oust him, the courts will award him what they may consider fair money compensation for his improvements. But what possible compensation can they give to him for privations undergone by him and all those near and dear to him; for anxiety of body and mind, and for the personal labor bestowed by him and all his family on the works the enjoyment of which the law fails to secure to him. To obtain even this poor money-compensation he has to attend the court day after day to the great damage of his crops and fields, has to engage the services of pleaders and revenue agents, and is dragged from one court to another before he secures a final award as to the amount of compensation to which he is entitled. To assess this amount, the court of first instance is compelled to issue a commission to some hanger of the court; and then a keen competition sets in to ingratiate this worthy agent of the law in which the tenant naturally labors under serious disadvantages. Whether he is the winner or loser in this competition he is scarcely to be congratulated on his fate. The writer of this paper has had some experience of these compensation clauses, for a law similar to these has been in force in Oude for the last 12 years, and he can say from personal knowledge that the amount of illegal remuneration paid to secure the favorable assessment of the amount of compensation is something so dreadfully enormous, that a tenant is really fortunate if after the payment of all his costs he finds even one-third of his original disbursement again in his pockets. These difficulties cannot be got over in drafting any rules for the grant of compensation, and it ought not to be astonished at, if these compensation clauses have failed to give the requisite impetus to the construction of works of irrigation. I beg therefore respectfully but earnestly, to submit that the Government of India is bound in justice to the whole of the Indian public, to concede fixity of tenure to the ryots who, by constructing permanent works of irrigation, provide a guarantee against the devastations of famine to the extent within their limited powers. I have been assured on enquiry in this part of the country, that if such a concession were made the whole country will, within a year or two, be covered by good pukka wells and tanks as if at the call of magic. and there is no reason to expect that it will be otherwise in the richer provinces of Bengal and Behar. There would be nothing to wonder at if this assurance of fixity of tenure should succeed where the compensation clauses have failed, for, as Mr. Mill observed,—" It is very shallow, even in pure economics to take no account of the influence of imagination: there is a virture in for 'ever beyond the longest term of years.' The unfortunate Indian ryot has been charged by some with extravagance, improvidence and ignorance, and the miseries from which he is suffering, it is tried to lay at the door of these unfortunate defects of character. Without admitting the truth of these assertions, I would submit that it is the fault of our land laws if the worst description of him is correct. Our laws place him absolutely at the discretion of one capricious individual, any signs of amelioration in his material condition operate on the landlord as an inducement for the enhancement of rent; he cannot dispense with the assistance of his children to give them even elementery education; and he can never hope, by the exercise of any amount of thrift and good management, to secure for himself in the land cultivated by him the slight right implied in fixity of tenures. It would be extraordinary if under these disadvantages the agriculturist of any other country was as thrifty and saving as the Indian ryot really is. Another strong reason therefore for the adoption of the suggestion advocated by me in these pages, is that by placing it in the power of every ryot to secure himself against capricious ejectment it would hold out a premium for the cultivation of thrifty and saving habits. The great curse of this country is the unlimited prevalence of usury, and in the absence of any other field for the employment of capita- it is impossible to condemn those who have recourse to it. Not expecting to secure any permanent hold on the land cultivated by him by effecting any improvements

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however useful or permanent, the Indian ryot does not choose to risk his capital by investing it in the improvement of his holding, and has naturally recourse to usury to make some little profit out of his small savings. One great defect in the land system of this vast empire, or rather in that of Northern India, is that there is nothing to which the peasantry can aspire. The ordinary Indian village is too large and valuable a property for an Indian peasant to expect that by any exercise of thrift he could purchase one for himself, and consequently there is no motive to indulge in saving habits: the suggestion herein respectfully made, will thus have the effect of supplying this great desideratum. Another advantage which is certain to result from the adoption of this proposal is that a keen competition will set in between the landlords and tenants in the construction of works of irrigation—a state of things which will be a great improvement on the present indifference and apathy evinced by the landlord class on this point.

I am conscious that my suggestion will be strongly opposed by the advocates of landlordism and cried down as communistic and involving the confiscation of property. It is sufficient reply to all these objections that whatever weight they may have in England, where the landlords have spent a great deal of their capital in developing the productiveness of their estates,—they are totally inapplicable to the peculiar state of things in this country. The only right which the landlords possess by the immemorial common law of this country in respect of the land included in their estates, is that of receiving a fair rental, and so long as this right is not interfered with, all cries about the infraction of vested rights will be misplaced. Irrespective of the peculiar circumstances of this country, even on general and juridical grounds, it cannot be denied that land is not property in the same sense as money or chattel personal is. The origin and the only cause of the recognition of private proprietorship in land is the fact that it is the best means of obtaining the greatest amount of benefit from it for the public in general; the landlord whose title is the most unimpeachable, is but a trustee for the public of the property entrusted to his management, and when the discharge of this public trust is neglected by any considerable number of these trustees, so as to deprive the public of some of the most important advantages which the community is entitled to look to, it would be simply impudence to deny that the State has no right to interfere by its laws so as to modify the powers of these great custodians of public property, in order to make it productive of greater advantage to the public. I believe the staunchest advocate of landlordism will not deny that, if any considerable number of landholders were to allow their estates to grow wild for want of cultivation, the State will have the right to divest them of their estates which they have used to the public disadvantage;—and yet what difference there is in principle in the interference in this instance and in that proposed by me does not appear. Speaking of Ireland, John Steuart Mill in his Principles of Political Economy, has made the following observations which apply the more strongly in this country, as they are supported by the principles of the Hindu and Mahomedan Codes of Jurisprudence: "The land of Ireland, the land of every country, belongs to the people of that country. The individuals called landowners have no right, in morality and justice, to anything but the rent or compensation for its saleable value. With regard to the land itself the paramount consideration is, by what mode of appropriation and cultivation it can be made useful to the collective body of its inhabitants." In fact, if the advocates of landlordism in this country are willing to appeal to the general principles of property and the rights arising therefrom, it will be observed that a tenant who affects a permanent improvement has a far stronger title than his landlord. The only reason on which private property in land can be defended is that the person recognized as the proprietor, or those from whom he has inherited, has contributed by his capital or labor to the development of the productive powers of the land included in his estate, and to quote the words of Mr. Mill, "Whenever in any country the proprietor, generally speaking, ceases to be the improver, political economy has nothing to say in defence of landed property as there established. In no sound theory of private property was it ever contemplated that the proprietor of land should be merely a sinecurist quartered on it." Very few of the landlords of this country unfortunately can make any pretence to hold on this title. Whatever exception may be taken to the opinion of Mr. Mill on the ground of his leaning towards communistic doctrines, no one I suppose would suspect Bishop Paley of any partiality for revolutionary and radical theories, and yet that venerable prelate in his

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Principles of Moral and Political Philosophy in describing the general rights of mankind observes,—" From reason then or revelation, or from both together, it appears to be God Almighty's intentions that the productions of the earth should be applied to the sustention of human life. Consequently all waste and misapplication of these productions is contrary to the Divine intention and will; and therefore is wrong, for the same reason that any other crime is so. Such as what is related of William the Conqueror, the converting of twenty manors into a forest for hunting, or which *is not much better, suffering them to continue in that state;* or the letting of large tracts of lands lie barren because the owner cannot cultivate them, nor will part with them to those who can." In another chapter of the same work the reverend author, after discussing the various theories which have been propounded to explain the foundation on which the right of property to land rests, comes to the conclusion, that the real and sole foundation of this institution is the law of the land. These laws, it is obvious, are themselves framed with reference to the requirements of public expediency, real or supposed, and are therefore liable to such amendment, modification and alteration which the altered circumstances of the country and the demands of public expediency might render necessary. The re-arrangement and modification, according to the fresh demands of public exigency of the existing rights in land, so long as they do not tend to bring about the confiscation of capital and labor already spent upon it, do not consequently appear such an heinous act as the advocates of landlords would seem to represent. The landlords of this country have spent precious little of capital and nothing in the shape of labor on the land, so great a proportion of the produce of which they monopolise to their sole use; it would simply be the height of absurdity therefore if the cries of such a body were allowed to operate as an obstacle in the way of an improvement, which would to a great extent guarantee the nation against the recurrence of so stupendous a public calamity as an Indian famine.

Another point on which I would beg to be allowed to make a few observations is the desirability or otherwise of conceding the power of mortgaging his holding on a tenant having the right of occupancy. This question has been discussed by the Bengal Rent Commission, and their recommendation is adverse to the granting of such a right. The reasoning on which the Commission support their conclusion is contained in the following passage,—" But although we allow the ryot to sell his holding, we prohibit him from mortgaging it. We think that this will most effectually prevent the ryot and his holding from falling into the hands of the Mahajan; and that the danger which some persons apprehend of Mahajuns becoming the owners of occupancy holdings, while the quondam ryots will remain on the land in a degraded condition of suffrage, will thus to a considerable extent be obviated. We believe that a ryot whom no persuasion will induce to sell his land, can very easily be led to borrow a few rupees upon the security of it for a wedding, or a *sradh*, or for some purpose of emergency—bad season, sickness or not uncommonly his own improvidence prevent him from paying the loan, which is rapidly swelled by interest. He thus gets more and more into the Mahajan's hands; and the hope of extricating himself and recovering his position finally disappears altogether; the result being that the Mahajan gets a decree, brings the holding to sale, and purchases it himself for much less than its real value. A Mahajan who will readily lend a little money on a ryot's holding in the hope of ultimately realizing a very considerable profit by foreclosing his mortgage, will have no desire to purchase the same holding at anything like a reasonable price with the intention of becoming a capitalist farmer." With all due deference to the learned and able gentlemen who constituted the Bengal Rent Commission, I would submit that their reasoning is not very cogent and is rather opposed to facts. The Deccan Ryots' Commission I think found as a fact that the Mahajans were not in the habit of proceeding to extremities with their debtors by proceeding to sell their holdings, and writing from memory, I believe that the complaint which they made against the Mahajans was that, while failing to undertake the duties and responsibilities of the ryot by purchasing his holding, they reduced him to a state of serfage by allowing him to drag on a miserable life of poverty and debt, whereby they could divert the profits of the poor ryot's labors into their coffers, and this I believe would be found to be the fact all over the country. The proposal of the Bengal Commission would not enable the ryot to secure a small loan on easy terms and small interest, would not prevent the ryot from running into debt, and would not therefore improve the

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state of things, as an impoverished tenant deeply indebted to a village Mahajan is not many degrees removed from a serf, even though there may not be the fear of enforced sale looming in the future. What I would suggest on this point is that the ancient and immemorial custom of this country on the point of alienation should be followed, and recourse should be had to the wisdom of ancient Hindu sages to assist us in the solution of these difficult questions. The precepts of these ancient legislators of this country allow the right of alienation only in cases of actual and pressing necessity, and this rule I think should be incorporated in this Bill, necessity however being defined to be the construction of permanent works of irrigation, the purchase of cattle, and the purchase of seed and food in times of famine. The recognition of the right of the ryot to mortgage his holdings would enable him to secure a loan on easier terms for pressing necessities, and would thus prevent him from being ruined by a debt obtained on hard terms and usurious interest, which must unavoidably result from denying him the power of effecting a valid mortgage.

I would further submit that the heir of a ryot holding an occupancy holding should be declared liable only for debts contracted for necessary purposes as described above, and this provision would enable every new successor to start without the burden of a large debt payable with usurious interest. I would also submit that the Decree holder in every case—whether he be the landlord holding a decree for rent, or a banker holding a decree on mortgage—should be absolutely debarred from purchasing the land in execution of his decree, and that provision should be made for the sale of every such holding on the spot. The Bengal Commission admit in a note attached to the passage quoted, that if the provision of the Civil Procedure Code, which forbids the decree-holder to bid without the special leave of the Court, were so applied in these cases as to make it the Mahajan's interest that outsiders should bid, there is little reason to doubt that better prices would be realized. The reasons which the Bengal Commission have adduced to prove the necessity of making this provision applicable to the case of Mahajans, apply with tenfold force to the case of a landlord, who would have no inducement to ruin an occupancy tenant; if he knew that he would not be allowed to purchase his holding; there could, further, be no fair competition when the landlord of the village is in the field. I would further confer a right of pre-emption on all tenants residing in the village in which the holding is situated in respect of all occupancy holdings sold, whether by private sale or public auction. Such a right would operate as an inducement to the members of every village community to save money, and would lead to the peace and tranquillity of every village, the introduction of a new tenant always being accompanied with a certain amount of friction. I would also beg permission here to make one remark on the rule of succession to occupancy holdings. The Bengal Rent Commissioners have decided that right of occupancy shall be inheritable according to the law of inheritance, to which the tenant is subject. But I would respectfully submit that the right should be conceded, subject to certain restriction, the right of inheritance being confined to lenial heirs and to collateral relatives within three degrees, except of course in cases of a joint family. The remote kinsmen to which the Hindu and Mahomedan laws concede the right of inheritance have no moral right to be maintained in possession of the property of one with whom perhaps they had not the barest acquaintance during his lifetime, and recognition of their rights is certainly not necessary, on social, political or economical grounds. Another restriction that I would humbly suggest is that where the result of dividing an occupancy holding among all the heirs would be to have a plot of land in the possession of every sharer less than a certain number of begahs (say 20), the holding should be considered impartible, and inheritable according to the rules of primogeniture, each of the other heirs receiving one year's profit from the person in possession of the land. The object of this suggestion, it would be observed, is to prevent the sub-division of occupancy holdings into too minute and small holdings—a fact which is very detrimental to the quality of land subjected to that process.

As regards tenants who have held for more than 3 years, the Bengal Bill provides that the tenant shall not be liable to ejection except for certain specific causes,—one of them being the refusal to pay an increased rent demanded by his landlord; the tenant, however, being entitled in this case to receive a year's rent from him. It would be much better, however, if the law made provision for the ad-

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justment of a fair rent to be paid by the tenant, and protected him from ejectment altogether ; for as the law stands, it empowers the landlord to oust an obnoxious tenant from the village community by paying a sum, which so far as the landlord is concerned, must be characterized as trifling. The better course would appear to be to empower the tenant to contest the notice of enhancement in a Rent Court on the ground of the rent demanded being extortionate and unfair, power being given to the Court to act as an arbitrator between the landlord and tenant by determining the amount which should be paid by the tenant as the rent for his holding. The landlords of Bengal will perhaps be the first to exclaim that they never oust their tenants except for good cause, whether it be the non-payment of rent or the refusal to agree to a reasonable enhancement. It does not therefore appear what right they would have to complain of a provision of the law, which only embodies a principle they profess to act upon, and which allows them full power to eject the tenant in the only cases in which his ejectment would be just and equitable The better class of the landlords would not therefore be interfered with, for the law does not clash with their practice, while all must admit that some legal checks ought to exist on the capricious actions of the black sheep of the community. A provision similar to that in the Bengal Bill has been tried in Ireland, and has failed to give complete relief; and a majority of the landlords of that country would appear to consent to the constitution of Courts of arbitration for determining the amount of rent which ought fairly to be paid by the tenant. The rights of the Bengal landlords do not rest on a more solid basis than those of the Irish proprietors of land, and they certainly are of far shorter duration than those of the latter. The Bengal landlords have not therefore much reason or justice on their side in objecting to a provision to which their Irish brethren cheerfully seem disposed to agree, at least to which they do not very strongly object.

In conclusion I would beg to apologise for having trespassed on the attention of Government with these humble remarks. I have intentionally refrained from making any observations on the details of the measures to which these remarks relate. The Bills under consideration have been framed and prepared by gentlemen having long experience and intimate knowledge of the provinces dealt with by them, and it would justly be considered presumptuous of an outsider to criticize a legislative measure prepared with such care and deliberation by gentlemen who are entitled to be considered experts on the subject. The points on which I have ventured to offer these few humble remarks are general in their nature, and their solution depends more on economical considerations than local peculiarities. I may be permitted, however, to remark that it is very much to be regretted that the Central Provinces Bill has not been prepared on the lines marked out by the Bengal Commission, additional provision of course being made for local peculiarities ; the omission which is more particularly to be regretted, is the protection provided for tenants who have held for 3 years and more by the Bengal Commission,—a provision the justice and expediency of which on economical grounds is simply unimpeachable. It may be that in the Central Provinces, sparsely populated as they are, there is at present a great deal of competition for tenants, and the necessity for such a provision therefore is not so keenly felt. But it should be remembered that the expectation of securing a good position protected by law may help as an incentive to emigrants from other provinces to settle. Besides there is no reason to expect that this difficulty which has arisen at one stage or other in almost every civilized country of the world, will not make itself felt in these provinces in time to come. It would, however be more difficult when that time arrives, to provide a remedy, and new obstacles will have to be overcome to secure that object. The very fact of a right not being recognized by law for any long period of time, becomes in itself an additional reason for its non-recognition in the future ; and long user helps to raise expectation, and claims which would otherwise be looked upon as audacious and inordinate. The zemindars of the Central Provinces are the last persons who have any right to complain of the protection offered to the tenants, their proprietary right owes its origin solely to the policy of the British Government, and must be considered subject to such modifications as that Government may chose to make in the interest of the peasantry and on grounds of public expediency. The country comprised in these provinces till but lately, when it was absorbed in the British dominion, was held by the Mahrattas, the land under this Government, being invariably held on a ryotwari tenure ; no one can therefore have any

right to complain of any relief or protection which the British Government may chose to provide for the ryots in these provinces. The Bengal Rent Bill is the most perfect one of its kind, that has ever been prepared for any one of the Indian provinces, and it is sincerely to be hoped that it will be passed by the Legislature, without its being allowed to undergo any mutilation, to please the landlords who are certain to strain every nerve to attain that end. The great majority of the Indian public, whose pecuniary interests are not involved in the matter appreciate the benevolent attempt which the Bengal Government has made to better the condition of the unfortunate peasantry; and it would certainly be an indication of great weakness if, notwithstanding the support which the measure has received from all people and shades of opinion, the Government of India strips it of its best points. It is very much to be desired that when the measure is introduced into the Legislative Council—whether imperial or provincial—steps may be taken to ensure the presence in the council of some native gentleman who looks at the subject from the tenants' point of view, and of the many enlightened gentlemen of Bengal, there could not possibly be any difficulty in making a suitable selection. The able Editor of the *Hindu Patriot* who is naturally a staunch supporter of the demands of the landlord, is already a member of the Bengal Council. It would not be perhaps too much to ask that a similar nomination may be made in favor of some other Bengali Editor who may have undertaken the thankless and unpaying task of advocating the rights of the unfortunate ryots.

LUCKNOW:
The 28th February 1881.

LUCHMEE NARAIN, PUNDIT,
Pleader, High Court

It would be impossible to fix uniform rates of rent for different classes of land in a district, or large division of a district. It is well-known that rates for the same class of land often vary in different fields of the same village. It is the different admixture of clay, sand, and alluvial deposits which determines the quality of the soil, and there are few villages in which the same soil obtains throughout its area. The scheme suggested by the Rent Commission would, therefore, work very well in the case of tables of rates prepared for different estates, but it would be very objectionable if one table of rates were prepared for a pergunnah or other large tract of country. As to the proportion of produce, the value of which goes to the landholder as rent, it varies with different crops. In Hooghly, Burdwan, Beerbhoom, and Bankoora the value of half of the paddy crop represents rent. For sugarcane, potatoe, and jute the same proportion obtains if the landholder pays half the cost of cultivation, but this is rarely done except by small rent-free holders and middlemen. For boro paddy the rent is nine-sixteenths, and sometimes ten-sixteenths of the crop.

It is nothing short of gross ignorance to designate the village current rates as competition rates. The ryots do not, and will not, take lands unless there be a margin of profit over and above the expenses of cultivation. There is no such custom as one rate for occupancy-right-holders and another for tenants-at-will. Neither of them take land unless there is a margin besides the expenses of cultivation. There is no such thing as competition for lands in the possession of regular jotedars in the sense in which competition is generally understood. Whenever a tenure-holder disposes of lands theretofore in his nij cultivation, or whenever waste or khamar lands are let, or whenever an old silted up tank becomes fit for cultivation, or sterile lands become fertilized by flood or gradual village washings, such lands are let by competition whenever there are several bidders in the field. This is done sometimes for the benefit of landholders and sometimes to satisfy the applicants. As when several persons obstinately demand to take the same land, the zemindar or his amlah is at his wit's end, for he cannot give preference to one person above another without causing much dissatisfaction and discontent, hence recourse is had to dispose the land to the highest bidder. Whenever a landholder establishes a new bazar, hât, or gunge, many persons like to take land in the front. On such occasions competition is resorted to. As the zemindar requires a number of shop-keepers in his new bazar, he is restrained from demanding exorbitant rates on such occasions. Without competition the ryots have their own way, even on such occasions. This is free-trade principle, and which even the most prejudiced advocates of the ryots cannot gainsay. The system of letting lands according to the village current rate, as well as those lands which are let under peculiar circumstances by competition, is no doubt liable to abuse and hardship now and then, but they are reduced to a minimum when we consider the existing checks. The zemindar knows very well that if he lets land at exorbitant rates, the ryot has the power of relinquishing the same at the end of every year, and that secondly, the zemindar's interest will suffer severely by the impoverishment of the ryot, when a large portion of his rent will not be realizable. Thus self-interest is a barrier to unfair dealings on these occasions. For these occasional hardships what remedy does our legislature offer? The Civil Court Judges and Revenue officers, with very slender, if any, experience, take upon themselves to settle the rates, not once for all time, but almost in every suit that comes before them. It is not difficult to imagine what sort of experience these officers possess about these matters. Our embryo-Moonsifs spend their boyhood in schools and colleges. A successful individual then obtains a diploma from the High Court, and hangs about an attorney or vakeel for two years to learn business. After that time of probation, he is at once appointed a Moonsif. In that post he continues for several years, till he is appointed to a Sub-Judgeship. Many of them have not seen a plough turn-up, or how many labourers are required to cultivate a field, or how rents are settled or accounts are cast up between the gomastah and the ryot. In fact, from his early youth he acquires no sort of knowledge about the different sorts of ryoti or zemindari interests. He reads in the newspapers and other periodical literature that zemindars oppress their ryots, and are hard task-masters. Their seniors also greatly help them to this mischievous feeling. They also learn to decide against landholders in the popular idea, and curry favour with the European Judges. So without any sort of knowledge about the management of estates they imbibe the popular prejudice. The case is not very different as regards the Revenue officers. Like their predecessors, the Collectors and Deputy Collectors have no knowledge regarding the management of khas mehals, because there are few such estates to manage in these days. From these facts it is patent that the experience of both the Judicial and Revenue officers on these points is simply nil. They grow up to maturity without knowing the preliminaries so necessary for acquiring sound knowledge. Is it not desirable that the settlement of rent-rates amicably between the interested parties should be made with the assistance of village munduls, without any interference even in small estates of the Judicial and Revenue officers? Bengal has prospered during the last 80 years by the former system. Instead of fostering this course of procedure, our modern legislature is trying, no doubt with benevolent intentions, to plant seeds of discord and discontent, and a feeling of jealousy and hatred, among the interested classes. It is exciting their vain hopes by telling them that they have been hitherto most oppressively treated and cheated by their

landlords, that they are entitled to such and such rights, advantages, and privileges. We are resolved to secure you the same. When you succeed to get them, you will be all happy and comfortable, and zemindars, gomashtas, and pykes, will not be able to molest you. With such declarations from the highest authority in the land, the ignorant ryots cannot but feel that better days are coming for them, and that they must thereafter despise their landlords and their agents, and become something like the adopted children of our rulers Can we wonder that when such opinions become thoroughly known to the ignorant peasantry, and which the crafty muktears and vakeels lose no time to implant in their minds, it cannot fail to engender deeply-rooted hatred between the landlords and their tenants. To sum up my opinion on the subject, I would limit the Collector's action to ascertain the rates of produce of each class of land in two or three portions of a district, when such information will become necessary in the absence of established rates. This enquiry should be made by the Collector and one of his deputies, and two of the landholders, and when votes are equal, the District Judge is to give his casting vote.

With these fixed rates of the gross produce of each class of land, the Judicial officer will find no difficulty in fixing the nirick of each class of lands with the aid of the list of prices of the last five or seven years, when it will be subject to revision.

In ordinary cases the enhancement should be determined by the current village rate, which is generally fair and equitable. Enhancements of rent take place for three reasons—(1) when the rates become gradually higher in consequence of something like permanent rise of prices; (2) when the quality of cultivable land in a village is improved by the village washings, or in consequence of establishment of new hâts or bazars, or by the construction of a road, which facilitates the sale and transit of crops; (3) when the landholder has reason to believe that in consequence of change of hands the ryots have gradually helped themselves to the waste and khamar lands of a village, or have alienated lands from their jumma with one plea or other as rent-free.

When the rates of rent rise in a village, for reasons stated above, the village munduls and other intelligent ryots, with the village gomastah, and sometimes also the zemindars, sit in a conclave, and after going over the subject from different points of view, fix the new rates, and thenceforward those rates become the established rates. It is clear that nobody else is better able to decide these points than the parties named.

With regard to enhancements of rent, the only duty which may well be entrusted to Revenue officers is the preparation of a table of proportion of the gross produce that has prevailed in each district, or in the segment of a district, from the last half a century and upwards. Such a schedule will not entail any hardship upon either of the contending parties, such as would be the case if the maximum be fixed at 20 or 25 per cent., because in consequence of difference of soil and other reasons the ratios vary in different districts. For instance, in Burdwan, Hooghly, &c, the proportion of 50 per cent. in paddy lands prevailed, and is still prevailing, while in Dacca and many other eastern and north-eastern districts the proportion is from 6 to 30 per cent. When such a table of proportions is authoritatively fixed, the duty of a Judicial officer will be much simplified, when taken together with the table of prices for the last five or seven years, with the exceptions of years of drought, famine, and inundation. When the Judge finds no trustworthy evidence of the existence of village current rates, the abovementioned tables will enable him at once to come to a decision as to the rate of rent to be paid for each class of lands.

Such a procedure will greatly tend to bring about amicable settlements between the zemindars and their ryots. Such a procedure also does away with the cumbrous plan suggested by the Rent Commissioners. These suggestions do not involve in a great measure the necessity of instituting suits in the Civil Court, with the prospect of transferring those suits to the Collector under the orders of the District Judge. In all these cases the parties will have to appoint pleaders, in the first instance, in the Moonsiff's Court, and perhaps in the Judge's Court, as well as in that of the Collector and Commissioner. Litigants, either zemindars or ryots, seldom fail to bring their objections to the notice of all the Hakims before whom the cases are submitted for order. Then, again, the provision for the settlement of whole villages will entail such an enormous amount of expense as to be almost out of the reach of a majority of applicants, but where is the necessity of such a proceeding when the decision of a suit or two by the Moonsiff or Collector will bring about an amicable settlement with the rest of the ryots. In lieu of which, the other plan will involve the expenditure of hundreds of rupees. Indeed, if the provision recommended by the Rent Law Commissioners be enacted in toto, it may be designated the impoverishment provision.

The suggestions of the Commissioners also involve so much unnecessary delay by reference from one Court to another, where each of the officers will perform the work thus imposed upon them at their leisure hours, that the delay, harassment, and expense will in no small degree prevent landholders suing for enhancement, and the ryots finding the helplessness of the zemindars, will in many cases hold back from making amicable settlements. In theory, propounded in plausible phrases, all these objections do not appear, but one practically acquainted with the complicated provisions will expose the scheme in its true light. When the Agrarian Disturbance Law was proposed under the *régime* of Sir Richard Temple, all well-informed persons predicted that such law would remain a dead letter, and their prediction has been realized, for as far as we are aware, not a single suit has been instituted under that law. With such results staring us in the face, the inevitable consequence that is sure to follow if the proposed scheme of enhancement be enacted into law is, that the relations between the landlord and his tenants will become much more complicated and unsatisfactory. The

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method, as stated above has hithertofore been to institute suits of enhancement, setting forth the quantity of land of each class, and the rates of rent to which they are liable, after issuing a notice through the Collector. The Revenue officers under Act X of 1859, and Moonsifs under Act VIII of 1869, adjudicate the suits after local enquiry, with an appeal to the District Judge. The complaint of landlords has not been against the law, but its administration. Notices of enhancement are issued through the Collector, who is responsible for their due service. A collectorate peon serves these notices; the ryots intentionally keep themselves away, and the peon generally is obliged to post the notice on the outer wall of the ryot's house in the presence of two or three of the inhabitants. When a suit is instituted for enhancement, the defendant-ryots invariably deny the service of a notice. Consequently the zemindar has to summon the peon and other witnesses. In their evidence before the Moonsiff there are a few unimportant discrepancies, such as that the outer door is on the north side, while the peon perhaps states that it is situated eastward, and other similar points too insignificant for notice; but our good, impartial Moonsiff rejects more than 90 per cent. under this alleged defect. They ought to remember that a peon serves dozens of notices at a time, and the witnesses generally belong to the lower classes. It is but natural that after some months' delay there should be slight differences. Such reasons, however, do not hold good with our worthy Moonsiffs. If it be said, why not bring respectable witnesses, the reason simply is that they keep away from the spot when the notices are posted up. A simple rule, directing that the peon should be accompanied by the village chowkidar, or another person, when he makes return to the Collector on oath, the deposition of his companion should be taken at this time. This proceeding of the Collector should be final, and not open to revision by Civil Courts. The complaint on this head has been loudly reiterated for the last ten or fifteen years, but our legislature has no leisure to attend to it.

The other defects of procedure loudly complained of by landholders are these: —

First ground.—"That the ryots are paying a rate of rent below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity." The words "the same class of ryots" evidently mean the ryots with occupancy titles. Why this distinction was introduced cannot be well understood. As there is only a single *nirick* current in each village, which knows no distinction between occupancy and non-occupancy ryot as has been explained above, both these classes take lands on fair and equitable rates, not by bidding at a sale, why, therefore, this provision? It however gives a handle to our Moonsiffs to reject the evidence of a large number of resident ryots in the village, on the ground that there is no trustworthy evidence of those ryots being occupancy right-holders, though they in their evidence distinctly stated that they hold lands in the village from the last 20 or 30 years, and in some cases the registered kobuleats of those ryots are filed, still the evidence is rejected and the case is dismissed. Also the words "for land of a similar description and with similar advantages in the vicinity" particularly puzzle the Moonsiffs and suitors. The Moonsiffs have construed these words differently in different suits, and hundreds of cases are smashed by misconstruing and misunderstanding them. Some maintain that vicinity means the very next plot from the one connected with this suit; others understand the same to mean at a distance of a few plots, and a very few construed it to mean the field at large. The two other words "similar description and with similar advantages" greatly mystify the Judges, and generally they decide against the landholders by turning and twisting their meaning as some Moonsiffs construe that the evidence of the witnesses does not go to the length of proving the conditions imposed by the legislature.

When the words stated in the preceding paragraph occasion so much confusion and loss to the landholders, the legislature is bound to substitute other less objectionable words.

From the commencement of the British rule in this country, our former legislators and judicial officers always used simpler words. The words first, second, third, and fourth class embody all the conditions prescribed in this ground, which are also understood by zemindars and ryots. Why were these classifications supplanted by abstruse and mystified provisions in Act X of 1859? One thing is clear, however, that the legislature of that time never dreamed that these words would be so misapplied and misconstrued to the detriment of the landholders I will therefore in all humility implore our legislature to revert to the former qualifications, and thereby diminish unnecessary litigation, heart-burning, and loss.

The following substituted scheme will do away with the evils complained of under the existing law.

1*st.*—That the different descriptions of land constituting a jote shall bear similar amount of rent according to the prevailing current *nirick* of the village, and which has been in vogue from the last ten years, unless trustworthy evidence of the existence of such village *nirick* be wanting. In the latter case the Court will be guided by the table of proportions as authoritatively fixed by the Collector upon the quantity of produce thus ascertained, the average price of each article which has ruled during the last seven years, without reckoning years of drought and famine, should be made the basis for fixing the rent.

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2nd.—All the lands constituting the jote or jummah shall be assessed according to the rates determined upon by the preceding section. If there be any objection on the part of the ryot to the quantity of any plot of land, or on the score of extent, the same shall be ascertained by actual measurement.

These two grounds will suffice for the ends of justice as contemplated by the provision of Act X of 1859, and thereby render useless the cumbrous provisions embodied in the sections 98 to 131 of the Rent Commission. Some provisions will be necessary to protect the auction sale purchasers from the frauds of former proprietors and ryots. These can be separately provided for.

I have here intentionally refrained from adverting to that part of the conditions contained in the third ground of enhancement, *i.e.*, "that the productive powers of the land held by the ryots have increased otherwise than by agency or at the expense of such ryots," because by investigation it will be found that this class of ryots makes no improvements which will entitle them te exemption from enhancements, simply no improvements are needed to secure the usual quantity of crops. The natural fertility of soil in this country is such that little or no manure is required. Our ryots don't cut irrigation tanks or water-courses at their expense When a wealthy ryot wishes to dig a tank he always provides himself with a sunnud or mukruri pattah from the zemindar. It is zemindars who excavate irrigation tanks and water-courses and erect embankments. There are no hedges on our fields. When a ryot makes a fruit garden, he is put to little or no expense He has only to gather a few mango or jack stones which he scatters on the land. Where, then, is the expense incurred by the ryot? I would therefore exclude these unmeaning words from the calculations of enhancement rates.

JOY KISSEN MOOKERJEE.

N T W —Reg. No. 14333J —132 - 5-4-81

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(ABSTRACT TRANSLATION.)

TO THE HON'BLE THE LIEUTENANT-GOVERNOR OF BENGAL.

THE poor and helpless cultivators of Omerpore and other villages, in the Attia sub-division of the district of Mymensingh, respectfully pray that the following questions may be taken into His Honor's favourable consideration :—

The rulers of our country have graciously undertaken to improve the Rent Law, but we, ignorant, poor and helpless cultivators can say nothing on the subject. The zemindars are trying with all their power to prevent the revision of the Rent Law (Act X); they convene influential meetings for their own convenience, and for the protection of their interest memorialize Government and cause long newspaper articles to be published, but the poor ryots can do nothing for themselves.

We, poor cultivators of the villages named in this petition, do hereby respectfully pray that the Lieutenant-Governor may look leniently on us, and order some adequate measures to be adopted for the redress of our grievances.

The zemindars oppress us in the following manner :—

I. The ryot, who has to pay a rent of Rs. 5 a year, is required to pay—

3 annas	on every rupee for	"village expenses;"
1 anna	ditto	on account of "nuzzer" to the proprietor or zemindar;
1 anna	ditto	for keeping accounts; and
1 anna	ditto	as bribe to the accountant.

Thus, the rent is swelled from Rs. 5 to Rs. 6-14, and, besides this, the inclusion of amin's food-allowance, day-allowance, mahtot, &c., often raise the rent to almost double the original amount.

II. The duty of collecting the road and public work cesses having been entrusted to the zemindars, they take from the ryots two annas instead of two pice on every rupee of rent. After the imposition of the road and the public works cesses, the zemindars have considerably enhanced the rents, and they levy those cesses from the ryots at the rate of two annas on every rupee of the increased jumma. There is no increase in the rate once fixed by Government. Though we pay so much, our Government receives but little of it.

III. Whenever the zemindars undertake any good or bad work, they recover its cost by imposing an illegal cess or mathot on the ryots. We beg to state the two following cases as examples:—Srimati Jahnavi Chowdhurani, zemindar of Kagmari, on the pretext of establishing a school bearing her name, collected from the ryots about a lakh of rupees.

Mahommed Ali Khan, son of the late Sadut Ali Khan, zemindar of Attia, having caused a murder in a riot in the village of Saitkhola, has sent a number of his ryots to prison, and is now recouping the heavy expenditure which he has incurred in saving himself by the levy of cesses from the ryots.

IV. The zemindars are very anxious that the following sections of the proposed Bill to amend and improve the law of landlords and tenants may not be passed or brought into operation :—

Section 26, regarding rights of occupancy;
Section 20, transfer of those rights;
Section 77, felling of trees where such rights exist;
Section 36, possession and erection of houses, &c, without the consent of the zemindar;
Section 28, compensation to be paid for giving up such rights;
Section 29, compensation for improvements on land to be given up, &c.

With a view to evade the enforcement of these provisions, the zemindars are very busy in sending their amlah and lattiyals from village to village to take kabuliyats for limited periods from ryots likely to be entitled to rights of occupancy.

We are trembling with fear at these proceedings of the zemindars, and pray that the Lieutenant-Governor may keep an eye over our miserable condition, and take special interest in having the abovementioned provisions of the draft Bill passed into law.

This memorial has been signed by nearly a thousand ignorant ryots, among whom Hakimullah, of Omerpore, is the principal memorialist.

(Then follow signatures.)

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J. A R.—Reg. No. 4341J-100-28-7-81.

(TRANSLATION.)

Petition of Khudiram Mandal and others, ryots of Sultanpore and other villages, in the District of Nuddea.

"WE, ryots of the villages named below, beg to represent, by this petition, that we are poor men, and have no hope of finding any one to espouse our cause and render us assistance. There is no one to explain to us the nature of the objections which the zemindars have raised to the provisions of the draft Bill for amending the Law of Landlord and Tenant. We have, however, by mutual assistance, made ourselves acquainted with the proposed law, but we do not find anything in it that is likely to cause any loss to the zemindars. They have raised the objections in question only because they know that in future they will not be able to promote their own interest at the expense of ours. We therefore pray that the proposed law may be passed, and the poor ryots be thereby protected in future from the clutches of the selfish zemindars." Dated the 28th February 1881.

Names of ryots, their villages, stations, and districts.

Mouzah Sultanpore, station Damoorhuda, district Nuddea.—Khudiram Mandal, Judhistir Mandal, Ramgati Biswas, Jadunath Mandal, Tarachand Halshana, Manick Chunder Biswas, Panchkari Das, Haridas (chota), and Obhoy Churn Biswas, &c., &c., &c.

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J. A. R.—Reg. No. 4340J—100—28-7-81.

NOTE

ON THE DRAFT RENT-BILL OF THE RENT COMMISSION,

BY THE

East Bengal Landholders' Association.

1. The word "owner" in the definition of the word "proprietor" in section 3 perhaps would preclude trustees and persons having a life interest only in the property; as well as *mutwallies* of *wakf* properties, and *shebaits* of *debutter* estates, and such other persons from being recognised as proprietors; thus debarring them from exercising any of the rights or enjoying the privileges given under the Bill expressly to proprietors.

2. The words "tenure" and "under-tenure" are now generally used indiscriminately for the same thing, and such use is admittedly not restricted to private documents; they are so used in public documents and they have been so used even in the Acts of the Legislature. Under such circumstances the distinction now made instead of remedying the evil will complicate matters and aggravate the evil. Then again the classification of "under-tenures" "in degrees" being altogether new will create misconceptions in the minds of the uneducated people who are the majority, and who are unused to such fine distinctions; and thus instead of making matters easy for them, these will on the contrary mislead them.

3. The definition of the word "ryot" is objectionable. It excludes from the category of ryots, persons to whom pasture lands or lands yielding grass or straw for thatching purposes or such other lands, not intended for cultivation, are let.

4. This much alone would not be very objectionable. But explanation 2 of section 22 defining "land," includes "pasture" lands as well as lands for "other similar purpose." Section 22 providing as it does substantive rules for the enhancement of rent of ryots having a right of occupancy, would again indirectly make tenants holding such lands not only "ryots" but would also give them right of occupancy in such lands. This view is furthered by the exclusion of "pasture or like lands" from section 41; such exclusion evidently leading to the conclusion that provision has elsewhere been made as to these lands. At all events these contradictions would foster and protract litigation.

5. The clause "or by persons to whom he has sublet the land or any part of it" in the definition of the word "ryot" is objectionable, as it would give the right to sublet his land, perhaps indirectly, to every ryot whether of one or of 12 years standing.

6. The definition of the word "land" is objectionable. Although this definition does not include buildings, but it would evidently cover lands on which buildings and shops stand, whether these lands lie in villages or in towns. It has also been made to include "woods and water thereupon." Hence under the provision of section 41, a right of occupancy will be gained by tenants, perhaps indirectly, in forests, fisheries, and even in lands with buildings let out for hire.

7. The definition of the words "tenant" and "landlord," taken with the definition of "ryot," "rent," and "land," would make the provisions of this Bill applicable to tenants holding lands or shops in *kutcha* or *pucka* houses, as well as to persons living in hired buildings. This Bill would thus by its title very probably oust the jurisdiction of Small Cause Courts in rent suits for such lands and buildings. Yet there is no express provision to that effect. Section 165 which provides for rent suits, relates only to lands, but does not include rent for buildings let out for hire. This will remain an open question and complicate matters and foster litigation. In case such suits are expressly made cognisable by the tribunals empowered to decide

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rent suits for land, then that would undoubtedly create difficulties now unfelt in the realization of rent of such holdings. This Bill, creating as it does many rights and privileges, as well as obligations and liabilities in the relationship of such tenants, will confuse the present system with no good return. Rent suits have been made cognisable by Collectors concurrently with Civil Courts, and rent suits relative to buildings, where questions of repair, of keeping the house in good order and the like are daily raised, will receive very indequate consideration from the executive body of the Government.

8. There are other peculiar questions incidental to the relationship which subsists between the owner of the house and the tenant to whom the house is let out for hire. The Bill, although framed with the evident intention of covering all questions that may arise between every description of landlord and tenant, does not make any express provision as to these. Yet from the title and the definition of the words mentioned above this would seem to be the only law governing such cases.

9. In sections 6 and 16, the year of the Permanent Settlement has been given as 1793, but there are estates which were settled permanently subsequent to that year. It is apprehended that the statement of the year of the Permanent Settlement so definitely will raise many difficult questions where the tenant's rent was fixed in 1794, but before the permanent settlement of the particular estate in which the tenure, under-tenure or holding is situate.

10. The extension of the provisions of section 51, Reg. 8 of 1793 from talukdars holding under zemindars to all under-tenure-holders will be very prejudicial to the interests of all zemindars. In the Report of the Rent Commission it is stated that the tenures and under-tenures which will come to be protected by the extension of this provision is "probably small." But it is submitted with due deference to the opinion of the learned members of the Commission, that the number of such tenures and, specially, under-tenures is not small. This extension will create a wholesale change in the rights and procedure of enhancement of rents of under-tenures, and give such under-tenure-holders a right which they do not enjoy under the law and which will be detrimental to the interests of their superior landlords.

11. Sections 8 and 18—one provision in these two sections is very objectionable. But before adverting to that, it is necessary to take objection to the word "*added*" to be found in both the sections. It may be contended that this word may also mean added to the *area* and not only to the tenure, under-tenure, or holding as included within the original boundary. This ambiguity will cause many disputes and litigation. This very word used in section 6 of Act 9 of 1847 gave rise to many Dearah cases and much correspondence. It has been contended in these cases that the word "added" means added to the quantity of the land originally settled; and this notwithstanding the provision in that section for finding out the addition by a comparison of two survey maps. In the sections now under consideration the words "diminution of the area" (for the purpose of abatement), and the words "which the increase or diminution of area bears to the previous area," will further the contention that, the addition is also meant to include the area or quantity of land originally settled with the tenant. That a provision with such a meaning is detrimental to the interests of zemindars, and injurious to them, will be apparent from the action of the Dearah authorities in respect to the assessment made by Government on lands added to estates. The following illustration is given to make the matter clear. An estate, A, containing 500 biggas of land according to the first survey and paying a Government revenue of Rupees 50 a year, is let out in *putni* for an yearly rent of Rupees 100. Subsequent to this there is diluvion of 250 biggas of its land on the Eastern and an accretion of 250 biggas of land on the Western side. The quantity remains the same. The zemindar and *putnidar* do not take an abatement in the hope of future reformations on old site. The Government assess the new accretions on the Western side according to the present rates at annas 12 per bigga $= 250 \times \frac{3}{4} = \frac{750}{4} =$ Rs. 187-8 annas, and allowing the zemindar a deduction of 30 per cent. (Rs. 56-4 annas) fix the revenue at Rupees 131-4 annas, and this the zemindar is bound to pay,

together with the original revenue of Rupees 50, *i. e.*, altogether he pays to Government Rupees 181-4 annas. But he cannot get any increase of rent due to him by the *putnidar*, for no lands have been "*added*" to the "*area*" of the *putnidar's* tenure. The quantity of 500 biggas has remained unaltered. Even if the zemindar had taken a reduction on account of diluvion, he would have obtained a reduction of only Rupees 25 and allowed the *putnidar* a reduction of Rupees 50. So in this case he gets from the *putnidar* only Rupees 50, but pays Government Rupees 156-4 annas, or Rupees 25 less than the previous rent. In the first case he suffers a yearly loss of Rupees 81-4 annas, and in the second case of Rupees 106—4 annas.

12. The most objectionable provision in these two sections relates to the rate or proportion of the increase of rent on account of additional lands. In this matter not only great injustice but material injury has been done to the landlord. It is very strange that the learned framers of the Bill entirely overlooked the action of Government in such matters, *viz.*, assessment under Act 9 of 1847. It is difficult to understand why the zemindars, who are assessed by Government according to the rates prevalent in the lands that have accreted to their estates, and not according to the proportion which the permanently settled revenue bears to the quantity of the lands originally settled with them, should be unable to claim increased rent according to the actual and prevalent rates in the added lands, and why the same principle which is adopted and acted upon in such cases between Government and zemindars should not be adopted and acted upon in similar cases between landlords and tenants. According to the construction of the rule contained in these two sections, in some cases there will be no increase of rent as far as the zemindar is concerned, while in those very cases the Government will impose an assessment on the newly formed lands which the zemindar will be bound to pay. Again in some other cases the zemindar will get but a small increase of rent while he will be forced to pay a very large amount and would thus suffer a loss, simply because there has been an accretion to his land subsequent to the first survey. An illustration of this will make the relative position of the parties—the Government, the zemindar, and the tenure-holder,—clearer.

13. In the zemindary *Govindpur* there is a *taluk* Ram Krishna Bose. The *taluk* originally had only 500 biggas of land and paid an yearly *jumma* of Rs 50 only. Subsequent to the first survey 250 biggas have accreted to the *taluk*. The rates prevalent in the newly formed lands are 12 annas a bigga. The Dearah authorities assess the 250 biggas at Rupees 187-8 annas minus 10 per cent. as collection charges and 20 per cent. as *malikana*, and fix the Government revenue at Rupees 131-4 annas for the 250 biggas. The zemindar is entitled to get from the talukdar according to section 8 only at the rate of Rupee 1 for 10 biggas (according to the proportion the old *jumma* bore to the original quantity of the land), and therefore only Rupees 25 for the 250 biggas, and make good from his pocket the remaining Rupees 106-4 annas. It is submitted that irrespective of any liability on the part of the zemindar to pay any extra assessment to Government for accretions, the zemindar should be entitled to get as increased or additional rent, all the realization from the additional lands with a deduction of 15 per cent. to be made in favor of the tenant.

14. It is urged that even "in cases of express contract to the contrary," the zemindar should be entitled to increase rent at least where there is Government assessment on the additional lands. The increase in such a case may be the full amount of revenue the zemindar is obliged to pay to Government for the additional lands, together with 15 per cent. on the assets as malikana and 5 per cent. as collection charges, *i.e.*, altogether 20 per cent. on the gross receipts; leaving the tenant to enjoy 5 per cent. as *malikana* and 5 per cent. collection charges, thus making up the 30 per cent. allowed by Government at the time of assessing the revenue. If no such provision is made, then the zemindar, who, without foreseeing the action of Government lately adopted under the Dearah surveys, may have made any contract barring enhancement in cases of accretion, will suffer very great loss.

15. The discretion given to courts by the proviso of section 9, to allow tenure-holders

and under-tenure-holders up to 30 per cent. of the profits, is objectionable. In such cases the courts lean towards the tenants, and whenever they err in exercising a right discretion, they err in favor of the tenant. So in almost all, if not all, such cases the maximum amount will be adjudged to be the tenant's share. The allowance of 20 per cent. of the profits is the highest amount given by Government even to zemindars as *malikana*, whenever the latter are entitled to any. Why then the maximum amount allowable to tenants should be 30 per cent. it is difficult to comprehend.

16. The words "a reasonable rent" in the latter part of section 9 may be expunged, and provision made that in such cases the rent that may reasonably be obtained for such lands at the time of the enhancement according to the prevalent rate in the tenure or under-tenure for such lands, shall be calculated for such portions and included in the gross rents. If no such provision be made, tenure-holders and under-tenure-holders whose rents are liable to enhancement, according to the proviso of section 9, will defeat the object of the proviso to a very great extent by themselves occupying large portions of the land or making rent-free grants or leases at nominal rents in the name of their dependants and relatives, but in reality enjoying the profits of the grants. The words "reasonable rents" are vague and will cause disputes and foster litigation.

17. Clause (a) of section 10 is also objectionable. The provision of the enhancement up to the limit of the customary rate is a sufficient check against arbitrary enhancement. The further limitation of not allowing the enhancement to go beyond double the amount previously payable, would be not only detrimental to the interests of the landlord but would be injurious to the tenant as well. The indulgent landlord who has allowed his tenant to hold on without any enhancement suffers, whereas the oppressive zemindar who has been keeping up his enhancement in full swing from time to time, does not lose by the arrangement. Because the tenant has been allowed to pay below the customary rate, and because the zemindar has allowed the tenant to make large profits for a number of years, the zemindar must suffer loss for a further period of 10 years, and that after probably a protracted and costly litigation, is very hard and unjust. A provision like the one contained in clause (a), section 10, will keep the zemindars always on the alert, and instead of creating any good feeling between them and their tenants will inevitably engender ill feeling between the parties. It may be true that in some cases only, double the amount of the rent previously paid would fall much below the customary rates, or would allow the tenant to get very much above the 30 per cent. provided. But it is also very true that in very rare cases only would such a provision be necessary to protect the interests of the tenants. The customary rate can never be said to be hard on the tenant, and the allowance of 30 per cent. where no such rates exist is more than equitable. Even the zemindar does not get so much. When he is entitled to *malikana*, 20 per cent. is the highest rate allowed him as his profits. Why then should the tenant obtain more from the zemindar than the latter obtains from Government, and why checks and limitations should be imposed, cannot be accounted for.

18. The provision for a gradual increase for five years is open to grave objections. Considering the "law's delay," the cost of litigation and the length of time it takes to bring the issue between the parties to a termination, the gradual increase of the enhanced jumma and its distribution over five years will be a poor return for the money, time and labour expended Another objection to this clause (a) of section 10 is this that it is so framed as to cover a case of enhancement under section 8 for alluvion lands. If the restriction to double the amount of the original rent, and the provision of distributing the enhanced jumma over five years by gradual increase, be made applicable to accretions, the zemindars will suffer very serious loss.

19. Section 11 is one of the most objectionable sections of the Bill. It is one of those sections of the Bill which, if allowed to remain, will revolutionise the whole system of land-tenures in Bengal; it will create an unknown, an unforeseen, an unnecessary and even an unasked-for right in favor of tenants, and at the same time be most prejudicial and detrimental to the interests of landlords. It will be an

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infringement of the vested rights of landlords. It will take away a valuable right from them without any the least compensation. It will bestow new rights and privileges on a favored class of persons, imposing no liability or obligation on them, while it will impose liabilities and obligations on the class of persons from whom these valuable rights are taken away. In order to create these new rights for a newly created class of persons, the landlords are to be restricted in exercising their just and inherent rights over their property.

20. Section 11 is specially objectionable:—

(*a*) for it has a retrospective effect;

(*b*) for it overrides both custom and contract;

(*c*) for the check to the acquisition of the right, *viz.*, by letting out the land from year to year, is in most cases impracticable of adoption;

(*d*) for the adoption of this check is inconvenient both to the landlord and tenant;

(*e*) for it is injurious to the interests of zemindars, who would prefer to lease out lands in convenient quantities to one person by one demise, but will now be debarred from doing so under the provisions of this section;

(*f*) for it is injurious to the interests of tenants, as they will not get so much land as they now do from one person;

(*g*) for it creates the status the very moment the grant is made;

(*h*) for it creates a new class of tenancy of a complicated nature for the first 12 years with no definite legal incidents attached;

(*i*) for even before it becomes permanent and transferable after the lapse of 12 years, no one in possession of it can be ejected;

(*j*) for by making it a tenure within the meaning of sections 8-9 and 10, enhancement of its rent becomes as difficult as of the oldest tenures, or in other words, practically impossible;

(*k*) for it places these tenures on the same footing as the oldest tenures, and bestows unfair advantage over the old tenures without any the least compensation or return to the zemindar;

(*l*) for it allows even such a tenure-holder 30 per cent. as the share of his profits;

(*m*) for on the death of such a tenure-holder without heirs, the land passes to Government and not to the zemindar.

21. The explanation attached to section 14 will create some confusion. In the old settlements of *khasmehals* this word *putni* has been often used with reference to *shikimi* taluks the lands of which were settled from time to time at enhanced rents with the old talukdars after the Government became owner of the parent estate at sales for arrears of revenue. The Government having sold these *khasmehals*, private individuals have now become owners of them. Under such circumstances if the word *putni* is allowed to raise a presumption in favor of the tenure-holders, it will cause much trouble and difficulty in enhancing the rents of such tenures. Further, this explanation seems to be quite unnecessary. The courts may be left to themselves to make any presumption they may find equitable where such a word is used.

22. Although it is now too late to raise any objections to the presumption that is allowed in favor of ryots, tenure-holders and under-tenure-holders on their showing an unchanged rate of payment for 20 years, yet any further concession to the ryots on this head cannot but be deemed as most unfair. And such a concession has been made in their favour by the explanation attached to section 17. For a period of more than 20 years, the ryots have been enjoying the benefit of this presumption. They have in the majority of enhancement cases raised this plea, and they are so fully aware of this their defensive armour, that they never omit to use it whether it suits their cases or not. Under such circumstances it would be making this injurious presumption still more injurious to the landlord. This provision will encourage tenants to adduce false evidence without the risk of any penalty for false verification. Why this special favor is to be shown to persons who do not themselves plead such a well-known plea, is unaccountable. It is therefore urged that this explanation which virtually

confers additional substantial rights may be expunged.

23. There are several objections to section 19, as it stands. Although the intention of the learned framers of the Bill is to confer a right of occupancy by this section to those ryots only who hold culturable lands for cultivation, but since the old wording of the section has been allowed to stand after the new definitions of the words "land," "tenant" and "ryot," the wording will create great difficulty and grave doubts as regards the meaning of the section.

24. In the first place great distinction has been made by the definitions between a "ryot" and a "tenant." And according to the definition of "land," land held by a tenant need not be for culturable purposes. Hence the words "as a tenant held" will lead to the conclusion that the land under the section need not be for cultivable purposes only. It is true that the use of the word "ryot" in this section would preclude such an interpretation, but it is no less true that the use of the more comprehensive word "tenant" would lead to doubts, disputes and consequent litigation.

25. Then there are objections to the spirit of the section. According to the definition of the word "ryot," right of occupancy under this section will be conferred even on a person to whom land is let and who does not cultivate it, but sub-lets it to another. That such a provision is not to the interests of the agricultural class, and that this will introduce a new class of middle-men, cannot be denied. Exceptions taken to the various provisions of the Bill which are calculted to cherish and increase sub-infeudation, will appear in their proper place.

26. Clause (c) of explanation 3 of section 19 will show that it is meant to confer rights of occupancy to persons who have been let into and kept in the possession of lands from year to year, or being let into possession for different terms have completed 12 years on occount of the landlord's indulgence. It is contended that express provision should be made that right of occupancy shall not be acquired when the ryot is kept in possession for 12 years, when the land is let out to him from year to year or for a term or terms. It should also be provided that a person shall not acquire a right of occupancy when he does not himself or through his relatives, servants or hired labourers, cultivate the same, and in order to ensure this end the definition of the word "ryot" should be changed.

27. Zemindars as a rule generally do not oust their tenants unless they persistently fail to pay rent or prove obnoxious in other ways, and as a rule they prefer to keep old tenants in possession of their lands. But they have a prejudice against ryots acquiring a right of this nature, and the natural result will be that no tenant will be left to enjoy the same land for a long period. There will be frequent evictions and change of tenants. This will tell in the long run very much against tenants for whose protection and benefit the provision is intended. If explanation 2 is allowed to stand as framed, a proviso should be added to it to the effect that a ryot shall not acquire a right of occupancy if he knowingly takes a lease and comes into possession through a wrong-doer, or colludes with a wrong-doer and participates in the wrongful act. Such a provision would check wrongful dispossession and much litigation. The principle contended for is to a great extent supported by the proviso contained in sub-section 8 of section 79.

28. Clauses (c) and (d) in the 3rd explanation of section 19 should be altogether expunged. They are highly objectionable. By clause (c), rights of occupancy under a right of occupancy will be created *ad infinitum*. Most emphatic and earnest protests are submitted against the power or right of sub-letting by a ryot having a right of occupancy.

Clause (c) not only allows sub-letting, but even bestows right of occupancy to an unlimited number of sub-lessees coming by degrees one under the other. The object of the Government is to ameliorate the condition of the actual tiller of the soil, who lives entirely on its produce; also to protect the actual cultivators from rack-rent and to exterminate, if possible, middle-men who have no interest in the cultivation or improvement of the soil. How then do the Commissioners propose such a system of sub-infeudation which will ruin the tillers of the soil and fill the country with an oppressive

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horde of middle-men, whose sole object will be to get as much as they can from the tillers, and pay as little as they can to the landlords. The mahajans and money-lenders whose connection with cultivable soil is so much deprecated will be the very persons who will gain by a system of sub-letting. They will buy up occupancy tenures, and having nothing more to do with the soil, they will sub-let the land to either the same ryot or to others, and endeavour to profit themselves at the cost of the ryot. When such is the effect of simple sub-infeudation it is easy to imagine what the effect will be of allowing a number of occupancy-right-holders to remain one under another in the same piece of land between the landlord and the actual cultivator. The profits of the same piece of land will have to be divided amongst a number of people without satisfying anyone, and this simply because of this new created complication. In case of sale of the occupancy tenure for its own arrears, the incumbrances will remain and thus the value of the holding will be almost nil. It will lessen the security of the landlord's arrears, without any gain to the occupancy-holder under whom the second occupancy is created. After a number of years the aid of the legislature will have to be invoked again for classifying these occupancy-holders into different degrees, and to settle their respective rights and obligations. The system of land-tenure now so simple, will be complicated and confused to an extent beyond remedy. Instead of clause (c) it would be proper to frame a provision to the effect that a right of occupancy would be forfeited as to the whole or part of the land which is sub let by the occupancy-holder, and the landlord should be permitted to realise the rent of that holding or part, as the case may be, direct from the sub-lessee who may then acquire a right of occupancy under the landlord. Of course in such a case provision shall have to be made for a rateable deduction from the rent previously paid by the occupancy-holder for his entire holding when a part only of it is sub-let. Such a provision will at once check all sub-infeudation by ryots who have paid nothing for acquirement of their right or spent nothing for its security, and will keep away money-lenders and mahajans from buying up occupancy holdings in the hope of being able to sub-let them at a profit. If the right is of any value the ryots ought to secure the same by cultivating the land themselves, by their relatives or by hired labour. In very rare cases this may be hard on minors or widows, but these persons may lease out lands in Burgá (বর্গা), or some special provision may be made for them to sub-let without the sub-lessees acquiring any right of occupancy. But in order to meet such rare cases it is not proper to enact any general provision for wholesale sub-infeudation. Then as to sub-leases already granted by ryots having rights of occupancy, they are undoubtedly few, and if it is contended, forfeiture should not be the penalty for such acts, yet to allow such sub-lessees to acquire rights of occupancy would be highly objectionable and prejudicial to the interests of both landlords and ryots. Provision may be made for resumption of such lands by the occupancy-holders into their own hands and a certain time allowed them to do so, and in case of their failure the landlord may be held entitled at his option either to resume these himself or collect rent directly from the holders. It is respectfully suggested that the proviso contained in the last sentence of clause(c), *viz.*, "if such land is held or occupied otherwise than for a term, or year by year" should be added to or embodied in section 19.

29. Clause (d) should be expunged. This makes an alteration in the existing law prejudicial to the interest of proprietors. Large zemindars seldom have *khamar* or *nij jote* lands. It is only small proprietors that keep *khamar* lands, and that for their own maintenance and not for profit. That was evidently the reason which found favour with the framers of Act X of 1859, and they excluded these lands from the operation of the right of occupancy clause, and perhaps that very reason has induced the framers of the present Bill to exclude lands of tenures and under-tenures from the operation of the right of occupancy clause. But there are numerous estates of less area and less value than many tenures and under-tenures. Under such circumstances to legislate in favor of one set of owners simply because they hold tenures or under-tenures and to sacrifice the interests of proprietors because they hold estates is no

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doubt very unjust, and the distinction would undoubtedly seem to be very invidious.

30. There are objections to clause (h) of explanation 4. Instead of the provision as it stands the following amendment is respectfully submitted :—

"By a ryot, who has contracted in writing with his landlord that a right of occupancy should not be acquired in the land of his holding, if such contract has been made at any time before the acquisition of the right, and if such written contract has been duly registered."

The object of this amendment is apparent. If acquisition of the right of occupancy is to be barred only by a contract made at the time of first letting out the land, and if no subsequent contract is to be of any avail, it will be the interest of all landlords to evict all ryots who have not already acquired such right. And these evictions will cause great distress, dispute and litigation, and be ruinous to the ryots. The provision now embodied in clause (h) will be an incentive for such Acts on the part of the landlords who would otherwise be quite willing, nay, glad to keep the tenants in their present possessions if they are allowed to make contracts barring the acquisition of the right. It is in the interest of both the landlords and the tenants that this amendment is suggested.

31. Clause (b) of section 20 decides the most disputed question, *viz.*, transferability of occupancy rights in favor of the ryots and against the landlords. Much has been said and written on this subject by persons representing the two different classes. But in the interests more of ryots than of landlords, it may be said that this clause should be expunged.

32. As to (clause c) section 20 it is submitted that ejectment for non-payment of rent after decree, as the law at present stands, should be allowed to landlords, leaving it optional with them either to sell out the holding or evict the tenant. The experience of the last twenty years has shown that landlords have seldom abused the power given them by law, and that such a provision is a salutary check against ryots falling into arrears. Then considering that payment of rent is the condition on which every holding is held and is inseparable from the right of occupancy, considering also that if the right itself be so valuable to the ryot he should be careful to keep it safe by regular payment of his rent, and considering that the landlord may eject where non-payment of rent is a breach of a stipulation in respect of which the ryot and the landlord have made a written contract, it cannot be said that to allow the present law to remain is hard on the ryot. Exception may be taken to the last sentence of this explanation (e) which provides the payment of a compensation to ryots in case of eviction on account of any breach of stipulation. The breach of a stipulation relating which both parties have most willingly made an agreement and reduced the same in writing is an infringement of the landlord's right, and if in awarding a decree for specific performance of that contract, the ryot is allowed a compensation it is simply punishing the landlord for seeking redress of wrong done to him and rewarding the tenant for committing the wrong. This provision should be entirely expunged.

33. In the case of crops other than staple crops the maximum amount of rent has been fixed by section 21, where there is no contract, to 25 per cent. of the gross value of the crops. This is not equitable. The rate varies from 40 to 50 per cent. in different districts in Eastern Bengal and there is no reason to depart from the present rule.

34. The new rules for enhancement of rent instead of making matters easy have increased difficulties and created complications, and have imposed new limitations and restrictions on the amount of enhancements, and have not only made enhancement virtually impracticable, but in case of a decree for enhancement, these rules will deprive the landlord of any profit considering the costs incurred, the troubles undergone, and time spent. The grounds of enhancement are the same, the wording of them almost the same, the difficulties as to comparison of the status and class of the ryot and the quality of the land remain the same. A few words providing a comparison between the old and present productive powers of the land, and a comparison between old and present price of the produce, and some restrictive words

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to the effect that the present increase whether of the productive powers of the land or of the value of the produce should be from causes not merely temporary or casual, have been added, and these are no doubt in keeping with the dicta of the rulings of the High Court. Then as regards the illustrations, at least some of them, instead of clearing up will probably raise some doubts and difficulties. Illustration (c) of ground 1 under section 22 will raise doubts as to who are ryots of the same class. A ryot under a proprietor and one under a tenure-holder do not belong under this rule, to the same class, though they may cultivate the same class of land.

35. Illustration (c) of ground 2 is not, properly speaking, an illustration, but it is a *substantive rule* against enhancement for excess lands where the boundaries are definite. Perhaps the object of the illustration is to guard against enhancement in cases where the parties knowing full well what they were about, made the contract for a specific piece of land, not so much for the quantity of land, as for the piece of land within the specified boundaries, whatever its quantity be; and where that quantity is mentioned not so much for fixing the rate of rent as for giving an approximate idea of its extent. In such a case it may be just to keep the parties bound to their mutual understanding and undertaking. But the illustration would cover many more cases, and in order to cover such rare cases if such a wide provision is allowed to stand, it will work injuriously both to the landlord and the tenant.

36. Illustration (c) of ground 2 of this section 22 cannot be said to be an illustration at all. It is clearly a rule of substantive law and should therefore be embodied in a separate section.

37. Clause (a) of explanation 1 is most objectionable. It defines a landlord, (who is entitled to enhance the rents of ryots having the right of occupancy) as a person having a *permanent* and *transferable* interest in the land, &c. Now, according to this definition, trustees, *mutwallies* and *shebaits* and like other persons would be precluded from enhancing the rents of ryots having rights of occupancy.

38. Explanation 2 of this section 22 is also very objectionable. In the first place the word "land" as used in this section has been defined to include land for "*pasture* or other similar purpose." Admittedly there are lands used for other than cultivable purposes. And it is therefore to supplement the general definitions of ryot, and land held by a ryot, contained in section 3, that land here has been made to include "lands for *pasture* and other similar purpose." Now this extension of meaning of the word "land" here will cause much confusion and lead to dispute and litigation. Section 22 provides substantive rules for the enhancement of the rent of ryots having rights of occupancy. Of course that means in respect to the lands to which they have a right of occupancy. And these rules relate to lands "for pasture and other similar purposes." Hence the reasonable conclusion is that these lands are such in respect of which rights of occupancy may be gained. And this contention is supported by the word "tenant" used in section 19, objection to which has been already submitted. However weak these contentions may be, they will at all events be a fruitful source of dispute and litigation.

39. In the next place objection may be taken to the proportion (*vide* explanation II) to be observed for the purpose of enchancing the rent of pasture lands. Although the word "pasture" only is used in this part of the section, yet as no provision is made for lands of "similar other purpose," the word "pasture" would also cover this last class of lands. Lands yielding grass or straw for thatching purposes would probably also come under this classification. It is a well known fact that the value of such grass or straw or the value of the yield of the pasture land, rises not with reference to any rise in the value of the crops of arable land. The value of the yield of such lands depends entirely on the question of supply and demand which depends on rains and floods or the quantity of such lands that may have increased or decreased from various causes. In short, these lands are totally different from arable lands. Under such circumstances to determine a proportion between the value of the produce of any year and then to apply the same for the purpose of enhancement will be extremely unjust and arbitrary, and will neither satisfy the landlord nor the tenant.

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40. As to the limitations and restrictions imposed by section 23 against enhancement of rent, many objections may reasonably be urged. By the last sentence of clause (a) the ryot has been allowed one half of the increase that may have taken place without the agency or expense of either the landlord or the tenant. It is difficult to find out any reason why so large a share should go to the ryot in such a case. The ryot took up the land at a certain rent and obtained a certain return for the same; that rent was admittedly fair and the tenant was satisfied with his return. After some time from some cause the land becomes more productive or the price of the produce is increased. Why should not the whole of this go to the landlord? It has been contended by many that the ryots have an interest in the soil; they must share in its produce. But in that case they should suffer a portion of the loss if any. Where the productive power of the land or the price of the produce is decreased, not through the fault of either the landlord or the tenant, the ryot should also bear half the loss of the decrease. Such a proposition would be looked upon as preposterous. But there is no reason why it should not be so if the ryot is to share the increase. Again in cases of payment in kind it is well known that the landlord gets $\frac{10}{16}$ or at least $\frac{8}{16}$ in return for the use of his land or in lieu of rent, and even in this Bill by section 21 one half the gross produce is allowed to the landlord and the tenant has the other half for all the outlay and labour which may be fairly taken to be equivalent to more than $\frac{1}{3}$ of the produce, so that there would remain at most $\frac{1}{6}$ as his profit. In the present case there is no labour and no outlay for the increase. The share therefore that the ryot ought to be allowed should not exceed $\frac{1}{6}$ of the whole.

41. One of the objects of the movement which has given rise to the present Bill was the simplificaton of the rules relating to the enhancement of rent of ryots having a right of occupancy. Some attempt no doubt has been made to gain that object, but unfortunately, the difficulties remain the same. The procedure portion of this subject may not be open to objection if it be possible to carry out the same without harassing any party concerned. If a table of rates and enhancement *jamabandy* may be made without heavy cost, it will no doubt be a boon to the contending parties. But howsoever easy it may appear theoretically, in practice it will be the most difficult task that a Collector can be called on to perform. The classification of the lands plot by plot and the ascertaining of the prevailing rates in the vicinity for the same class of lands held by the same class of ryots, will be the most difficult questions to be decided by him. It is not to be expected that such detailed enquiries will be carried out by the Collector himself or even by his Deputy. It will invariably be entrusted to a venal *Amin* who will no doubt incline to this or that side as may best suit his interests. A table of rates or an enhancement *jamabandy* once made is to remain in full force for 10 years, and this though provided with the object of diminishing litigation and for ensuring peace, will induce the tenants to make more substantial offers to buy up the *Amin*. The outlay for this will be divided between the whole body of tenants and will not fall heavy on them. Then again in *uthit patit mehals* (in estates where some lands are held *thicka*) and in places where lands are ever changing from one class to another, the application of a table of rates will be beset with almost insuperable difficulties. So much for the procedure to be adopted on the substantive rules as to enhancement.

42. As regards the substantive rules themselves it cannot but be remarked that the proposed provisions do not in the least clear the vagueness of the present law. The same words "prevailing rates," "same class of ryots," "land of a similar description and with similar advantages," remain unaltered. And there are a host of rulings of the courts interpreting these words in different ways. The only alteration made in the 1st clause of section 22 is by the word "vicinity" for "places adjacent." A number of rulings have interpreted the last two words and it may be said have attached a particular meaning to them. Now by the proposed alteration no good will result from it. The courts will not attach the same meaning to this word for the evident reason, that if it were so, then there would not have been any

necessity for the alteration. Hence for some time at least the meaning of this word will be the subject of contention till a few rulings of the High Court set the matter at rest, and this can never be expected before a large number of suitors have suffered.

43. Instead of clearing the long felt difficulties in ascertaining the prevailing rates, &c., the present Bill only provides certain very reprehensible checks and limitations on enhancement. By reading section 23 an impression is left on the mind of one who is not cognisant of the working of the existing enhancement law, that perhaps it has been ascertained as a fact that at present the ryots having rights of occupancy are very much harassed and impoverished by the landlords under the present law, and that perhaps the existing law allows rack-renting, and consequently these provisions are needed to check this abuse and impose restrictions on the maximum amount of rent payable by a tenant. It is a well known fact that at present enhancement can only be obtainable under clause 4 of section 22. The increase of rent under clause 2 is, properly speaking, no enhancement at all; it is simply payment of rent generally at the old rate for the use of excess lands. To obtain an enhancement under clause I is always very difficult. Clause (b), section 23, imposes two restrictions on enhancement under clauses 3 and 4. Clause (c) is a third check. All these will combine to give the landlord whichever be the lowest amount according to the provisions of the three clauses. But this so-called lowest amount is the maximum to which the rent of the ryot is liable to be enhanced. And can it be reasonably expected, that this highest amount will be decreed by the courts to landlords. It is a fact that the courts always lean towards the tenant whom the tribunals deem to be object of sympathy; and sympathy will invariably cause the reservation of a little margin out of the maximum amount payable by him. There is a further check provided by clause(d). The increase may be distributed over five years, so that the landlord gets the full increase from the fifth year.

44. It should be noted here that the way in which clause (d) has been worded would empower the court to distribute the enhanced jama over five years even when the enhancement has been allowed on the ground mentioned in clause 2, *viz.*, for excess lands. If the heavy cost involved in conducting an enhancement suit be taken into account, also the length of time necessary and the amount of trouble undergone to bring it to a conclusion, the provision as to progressive enhancement will undoubtedly be deemed to be unjust. The last though not the least check on enhancement is contained in clause (e) of this most reprehensible section. Why the ryot should get a deduction of the Road and Public Works cesses on his old rent in case of an enhancement, and why this loss is to be suffered by the landlord, it is difficult to understand. The facilities for going to markets and bazars, afforded by the construction of roads in the village, will benefit the ryot more than the landlord, though the latter has borne half the cost. Why then should this consideration be shown to the ryots it is hard to imagine. It is earnestly submitted that if no better provision can be made in the place of the present law of enhancement, it is proper to leave the law as it is. To impose the restrictions contained in section 23 would be most unfair, unjust and uncalled for. It is therefore submitted that section 23 be expunged.

45. Chapter IV is another most objectionable innovation. Many of the general observations submitted with reference to section 11 more or less apply to this chapter. This chapter should be expunged from the Bill. The rights and privileges given under this chapter to ryots holding the same piece of land for three years, will deter a landlord from keeping or allowing any tenant to be in possession of the same piece of land for more than a year or two. Such a proceeding on the part of the landlords, which they will be forced to adopt, will not only be very troublesome for the landlords themselves but will also be very much against the interest of the ryots. Frequent change of hands will be a bar to even any temporary improvement of the soil by the tenants. It is not at all easy for landlords to let out such lands year by year. In order to make such letting out year by year reliable in the opinion of the courts it will be

necessary to secure registered *kabulyats* and give registered *pattahs*, a proceeding not at all easy to adopt and which will impose unnecessary and even ruinous cost. The system of imposing the burden of yearly *pattahs* and *kabulyats* is not only odious to the notions, but is also incompatible with the habits, of the people of this country. It is also evident from a comparison of sections 11 and 41, where express mention is made of the time from which the period is to be counted, that this section is intended to have a retrospective effect and will entitle the ryot to the benefit of this chapter as soon as the Act is passed.

46. The provisions contained in this chapter will complicate the system of land tenures to a very great extent by creating a new class of ryots with some very peculiar rights and privileges, quite unknown in the country. The advantages granted to such ryots are inimical to the landlord's interest without any commensurate profit given to him in return. It is undoubtedly a piece of class legislation in which the landlord's interests are lost sight of. The power given to landlords for eviction by demanding an increased rent is also nominal. In the first place whenever the tenant will contest the demand, the courts will raise an issue as to whether the rent asked is fair and equitable, and notwithstanding the provision contained in section 27 (a), the courts, considering the provision contained in section 35, clause 2, will not in any case decree any rent that it may consider unfair and inequitable Many rulings of the High Court will support the view that when the landlord wants to increase the rent of even a tenant at will by a notice, he shall not get more than what is fair and equitable. When clause 2 of section 35 provides that even in case of a ryot holding land for less than three years, the enhancement through the Civil Court can never be more than double the former rent, and when the case of ryots holding for three years or more is on a higher and better ground, their rent will not even reach the double amount but will fall much below the same. Thus the power of enhancing rent or getting out the land from such a ryot's possession would be out of the question. In the second place if the courts be held bound to decree the amount asked under clause (a), section 27, even then it would be next to impossible to evict the tenant by asking an exorbitant amount as increase. Section 28 will entitle such a tenant to get the same exorbitant amount as compensation for disturbance and again another amount as compensation for improvements under section 29. Hence to eject such a tenant would be out of the power of an ordinary landlord unless he be driven by *malice prepense* to incur an unwarrantable amount of expense in order to get himself rid of the tenant. By asking any reasonable amount the tenant cannot be disturbed at all, and by asking an exorbitant amount, either the landlord gets only a reasonable amount or the demand recoils on the landlord like the famous boomerang and inflicts on him a heavy damage for his presumption. Thus it is that the landlord must not trouble himself with any idea of ejecting a tenant of this class, however refractory he may be, and however insulting his conduct may be towards him. The traditions of the country and the customs and habits of the people favor and accept the idea that the ryots are the children of the zemindar. But the laws of the realm are gradually subverting that notion and creating a formal and artificial tie and thereby engendering dislike and distrust of each other. Now-a-days there are few attempts at evictions. To the adoption of this extreme measure the landlord is not at all led unless forced by circumstances of great necessity. So long as the ryot knows that he should depend on the good-will of his landlord for his success in life, the relationship beween landlord and tenant is easy and smooth; but when he will come to know that he has no favor to ask of his landlord, that in fact he could defy his landlord without involving any serious consequences, he will become haughty and overbearing. The provisions of this chapter instead of making matters smooth will cause agrarian disturbances, will subvert all system and arrangement, and in short, cause a revolution in social life, the far-reaching consequences of which it is not easy to foresee.

47. The provision for compensation for disturbance is very peculiar. How-

soever resonable may be the demand for increased rent, the tenant may by electing to relinquish the land gain one year's rent and then take another piece of land from another landlord even at the very rate or more or less. Again when the landlord has committed a mistake by demanding an increased rent he cannot even remain at peace by repenting for his error. The tenant is at liberty if he elects to relinquish his land which he would by all means do, as he suffers no loss whatever, rather on the contrary makes a clear gain, by enforcing the payment of the amount demanded from him by the landlord.

48. The provision as to compensation for improvements contained in section 29, is likewise very objectionable. In the first place let it be seen what are designated as improvements under this section, the provision of which has likewise been made applicable by section 20 clause (e) to the case of an eviction of a ryot having a right of occupancy under section 19. For an explanation of the words "dwelling-house, &c., contained in the explanation appended to section 29 the proviso contained in section 36 should be consulted. According to the last mentioned proviso any ryot may, without the consent, nay, even against the wish of his landlord, erect upon any part of the cultivable land let out to him, a brick built or other permanent building for his use. And yet such an act will not be looked upon as an infringement of his landlord's right and will not subject him to eviction. He will be perfectly at liberty to dig tanks, and convert the paddy field into a kitchen, garden or an open lawn, and thus virtually be the landlord of the place. His position will be better off than his landlord who runs the risk of his estate being sold for arrears. But this man who came as an ordinary ryot is safe from eviction not only by his previous landlord, but even by the purchaser at a sale for arrears of revenue. His rent cannot be enhanced. Properly speaking, the ryot by these so-called improvements gets the land virtually alienated to him for ever and this notwithstanding the impotent rage and fruitless protests of his poor landlord. The only check that might have existed against such acts of open defiance is swept away by section 29 which provides the payment of a compensation for these wrongful acts of the tenant.

49. The last sentence of section 30 which makes a decree for compensation up to 50 Rupees final and conclusive is also objectionable. In these cases of compensation complicated questions of various sorts and specially of account will be raised, and to make such cases final up to 50 Rs. would be very unjust and improper.

50. Section 31 is the most objectionable section in this objectionable chapter. It gives a screw in the hands of the tenant to crush his landlord. Why this plea or rather a pretence of claim for abatement has been put into this section cannot be imagined. It would have been as well to provide that whenever a ryot of the class mentioned in this chapter wishes to abandon or relinquish his holding, he shall be entitled to one year's rent as bonus or gratuity from the landlord and also the price of houses he may have built by which he has damaged his landlord's land and infringed his right. To call the year's rent (to be paid by the landlord to his tenant when the latter leaves the land) a compensation for disturbance is undoubtedly a misnomer. If any body is disturbed in this instance, it is the landlord and not the ryot.

51. In a case when the amount of the rent depends upon the mutual understanding of the parties, and when the tenant even under the provisions of section 27 is not entitled to remain in the land if he does not consent to pay any amount the landlord would choose to demand, and when non-payment of the rent agreed to entitles the landlord forthwith to evict him, in such a case, to provide that the tenant is entitled to claim an abatement is undoubtedly preposterous. This is a peculiar provision which gives a tenant at will the privilege of claiming an abatement. It is true the section does not in so many words bind the court to allow an abatement, but when it binds the court to allow a compensation for disturbance and another compensation for improvements, it virtually recognises the right to abatement or at all events allows the tenant to wield this claim as an offensive and defensive instrument against his landlord, and thus gives him an opportunity, in some cases at least, to attain his object. This section will very likely give tenants

(a speculative tenant) a source of income without any outlay at the cost of his landlord or landlords.

52. This chapter virtually gives a ryot of 3 years standing almost all the rights which a ryot of 80 years can possibly enjoy. If the right of transfer proposed to be given to a ryot having a right of occupancy be excepted, the position of a ryot under this chapter is perhaps better than that of a ryot having a right of occupancy. As far as sub-leasing is concerned, both are on an equal footing. So also with respect to erecting dwelling-houses, digging tanks, &c. The ryot with a right of occupancy is as much liable to eviction for any breach of stipulation as the ryot under this chapter. Both are equally entitled to maintain suits against their landlord for the determination of rent at which they shall be entitled to hold their lands. And this right of a ryot of 3 years standing may be gathered from section 32, clause 2, when a ryot of less than three years standing is expressly excluded from such a right. In the case of enhancement of rent the occupancy ryot cannot relinguish his holding, for if he does, he does at a loss to him, the provisions for compensation for disturbance and compensation for improvements not helping him in that case. But if he chooses not to pay the enhanced rent, his holding is sold, and he then has to content himself with the hope of realizing something from the sale-proceeds after the rent and costs are paid up. The sale-proceeds are an unknown quantity, and may not give him, after deducting all claims and charges, an amount equal to one year's *jumma* at the enhanced rate claimed, together with the full value of his improvements. But not so uncertain is the case of the ryot of 3 years. He is served with a notice of enhancement, and he without incurring any expense or trouble for contesting it (like his brother with the occupancy right) elects to abandon the land and gets a clear sum equal to the *jumma* demanded, together with the full value of the improvements, and this free of all cost and trouble. There is not much difference in the case of abatement. Both can claim abatement on the same grounds. In the case of a ryot with the occupancy right, the landlord is bound to allow abatement if the ground is substantiated; in the other case, the landlord is allowed the option to choose between two evils,—either to allow abatement, which must necessarily mean a yearly loss of small amounts for some time, or to pay in a lump one year's unabated rent and the price of the improvements. In one way the position of a ryot of 3 years standing is even superior to that of a ryot of more than 12 years. The right of the latter may be barred by an express contract, but that of the former cannot be done so unless by letting out to him for a term or from year to year. On account of the very serious innovation that is intended to be made by this chapter, by extending rights of occupancy to ryots of 3 years standing, and on account of the grave importance of the matter, it is again most respectfully submitted that this chapter 4 should be entirely expunged.

53. The provisions of chapter 5 with some alterations should be made applicable to all tenants who have no rights of occupancy. Although the word "tenant" is used here in the comprehensive sense in which it has been defined in the Bill, but tenure-holders and under-tenure-holders are not to be taken as included within the word as used here. The consent of the landlord mentioned in clause 1, section 33, should be expressed, and not implied, in order to entitle the ryot to a notice when he has been holding over his term. It should be the ryot's business to get such a consent after his term is over before he enters into the land again. Such a provision will be good for both parties, and check some dispute and litigation. The provision contained in clause 2 of section 33 as to serving a notice of ejectment through the Civil Court is objectionable on the ground of its being costly for no purpose. The provision in clause 3 of section 79 which deals with the subject of the service of a notice from the tenant to the landlord in the matter of relinquishment may be as well made applicable in this case.

54. The proviso in clause 2, section 35, which provides that in no case of enhancement shall a tenant of this class be liable to pay more than double the former rent, is objectionable. In the first place, because this is also the maximum of enhancement of the rent of a ryot having the occupancy

right. Secondly, because the explanation appended to this section, would entitle a ryot to remain in the land even against his landlord's will. When in the notice of ejectment by some inadvertence or mistake, or when by following the ordinary mode of drafting such notices, the landlord has asked a very high rent as an alternative to eviction, believing that the ryot would be obliged to leave the land from sheer inability or unwillingness to pay the amount demanded, the ryot may elect to remain in the land and then this notice is to be treated as a notice under clause 1 of this section. This means that the notice is to be treated as a notice of enhancement. Then clause 2 comes into operation, and according to its provision the tenant would not be bound to pay more than double the old rent. Thus a refractory tenant might remain in the land by paying the excess amount, though the object of his landlord was to eject him. And this may happen just in time to make up his time when by remaining 1 year he would be liable to acquire a right of occupancy. It may be urged against this contention that the landlord is to thank himself for such an inadvertence or mistake, but it should also be borne in mind that the complicated way in which the sections are drawn up will lead many to commit such mistakes. It is also therefore submitted that the proviso should be expunged altogether.

55. Chapter 6 is another of the most objectionable portions of the Bill. The whole of this chapter should be expunged. The homesteads of cultivating ryots or ryots to whom culturable lands have been let out for cultivation, are sufficiently protected by explanation of the word "bastu," under the general definition of the word "land." Hence there is no necessity for this chapter at all in the interest of the cultivators.

56. If the legislature is determined to create a new right in favor of persons other than cultivators, the right of occupancy may at most be given them over their homestead lands when they have occupied such lands in villages as their homestead consecutively for a period of 12 years, after the commencement of this Act, and have been paying rent for the same. But no such right ought to extend to lands in towns, bazars, hauts or to lands used for shops and stalls, &c., or for storing goods and merchandise. Nor should such a right be made transferable except by inheritance, or for its own arrears at a sale at the instance of the landlord.

57. As a rule for the enhancement of rent of such land the maximum amount to which the rent of such holdings may be enhanced may be fixed at 9 per centum per annum of the market value of such land.

58. Section 36 would indirectly entitle any ryot as is mentioned in section 19, without the permission of his landlord, and perhaps even against his will, to use any portion of land used or let to be used for agriculture, horticulture, pasture or any other similar purpose, for building or for any other purpose inconsistent with that for which it was used or let to be used as aforesaid. The injustice of such a provision is apparent. Perhaps it is an oversight and therefore any remarks are unnecessary.

59. It may be simply added here that such a right should not be given to any description of tenants. It is a well known principle that even a co-sharer in joint property, is not entitled to any such permanent buildings to the prejudice of his other co-sharers without their consent. In some cases no doubt it has been held that when one co-sharer is allowed to do such acts without any objection from the others, such buildings cannot be pulled down, but damages or compensation in some shape may be realised from such a wrong-doer. Under such circumstances, to allow common tenants to do what one of several joint owners is not entitled to do, and to call such acts improvements and to allow such acts to be done as of right, notwithstanding the protests of the landlord, and to disallow him from seeking any redress for, or even to put a stop to these works through the courts, cannot but be an infringement of the landlord's rights in the land. It is a most valuable right, to obtain which the tenants now pay a large amount as *salami* or bonus to the landlord. The ryots do not and cannot suffer from not possessing such a right. Those that are capable of erecting permanent buildings and out-offices are also capable of buying up the lands on which these are to stand, or at least to pay an adequate

salami or bonus as would induce the landlord to part with his right. In very rare cases only are such permanent buildings attempted to be raised. To make a general provision to meet the requirements of such rare cases would be most prejudicial to the landlord in many ways, without conferring any appreciable benefit on the generality of the agricultural population in the country.

60. For the reasons stated above, section 36 should be expunged. Section 37 should be so changed as to make any ryot who begins to use any land without the written permission of the landlord, for any pucca building, or any other purpose inconsistent with that for which it was used or let to be used, liable to eviction even in the absence of any express contract to that effect, and also liable to restore the land to its former condition, or pay damages if such condition has been altered.

61. The provisions of the Specific Relief Act and the Civil Procedure Code may be applicable as to injunctions which the landlord shall be entitled to obtain against the ryot to make him desist from such wrongful acts. It cannot be expected of landlords that they shall always remain informed of the doings of their tenants at a great distance from their seat or head-quarters. Hence it would be very hard to refuse them redress of such infringements simply because they are not on the alert. The words "reasonable time" used in sections 38 and 39 are therefore objectionable. Two years may be fixed as the time within which the landlord may either sue for ejectment on the issue of any notice or injunction against the ryot.

62. Section 41 has been most objectionably framed. According to the definition of the word "land," right of occupancy may be acquired even in fisheries and forests, in lands on which there is a dwelling-house, or a shop, when such land has been let out for hire, with the dwelling-house or shop. There is no reservation. All lands will come within the action of the section. There is a piece of land in the heart of a town; on a portion of it stands a building, and the rest is covered by a garden, a tank and a small lawn. This is let on hire to a gentleman at a monthly rent, and he completes 12 years' possession of it either continuously or after 2 or 3 breaks of some years. It is submitted that he cannot be ejected from the house and the land. In the land he has got his occupancy right, even if not in the house, and as the one cannot be separated from the other, he cannot be ejected from either. The rent which he paid was not for the building only but also for the land as well. There is no exception made in cases where the land is let out for a time or from year to year. There is no provision that the 12 years should be consecutive or continuous. Nor has payment of rent been made a necessary condition for the acquirement of the right as provided by section 19.

63. The value of all such lands will get on decreasing instead of increasing with the progress of trade and prosperity of the country. This apprehension may appear to be unfounded, but it is too true. The operation of section 42 will make 5 per centum per annum of the market value of the property, the maximum amount of rent realizable on such holdings, and this will reduce the value of the property. Government paper yields 4½ per cent., and this free of all costs. For land there is the revenue or rent to be paid, then the Road-cess and the Public Works Cesses. Some expenses have to be incurred for collecting rent and the difficulty of realizing it is immense. Some consideration should also be made for outstanding balances of unrealized rent. Again there is the risk of launching into litigation with tenants or others. After all this expense and trouble and some ineffectual attempts at enhancement, at last a 5 per cent. per annum is the maximum amount of reward to cover all that. Who would under such circumstances invest money in land? The demand would fall down and with it the value of land. Even now people consider investment in land as a bad speculation so far as profit is concerned. It is only the security of the investment and the honor attached to the possession of land that has kept up its value. If the Bill be passed into law, landed property will very much decrease in value. After the rent has once reached the 5 per centum maximum, the value of the land will remain stationary, and thus the rent will virtually be a permanent one. It is for these reasons that this chapter (6)

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should be expunged and provisions as suggested be enacted in lieu thereof.

64. The manner in which sections 43 and 44 have been framed will lead to a doubt as to whether the presumption raised in that section will or will not be applicable to cases that happened *before* the Act. In case it be held that the presumption will have retrospective effect, great injury will be done to parties concerned. It will then create a revolution in the system in which estates and tenures, &c., have been so long held. It is therefore submitted that it should be expressly provided that the provisions of these sections will not apply to cases that have occurred before the passing of the Act. If the legislature intend to give effect to this section in respect to past transactions, at least 6 months' time should be given to the proprietors and such landlords as are mentioned in sections 43 and 44 to declare their contrary intention. The provision in clause (a) of section 43 that a presumption shall be made in favor of merger, unless a contrary intention appears, would be a fruitful source of litigation. If it is urged that the presumption can only be rebutted by a contrary intention proved according to clause (b) of this section, then it is submitted that the word presumption becomes useless; the word "held" might be used instead of the word "presumed."

65. The words "in the same right and at the same time" in sub-clause 1 are rather vague and are susceptible of meanings which may lead to doubts and disputes. The words "same interest" may be used in framing this clause. For example A and B purchase each 8 ans. of an estate in January 1879. Subsequently, A purchases 10 ans. of a tenure and B the remaining 6 ans. of the same at the same time. Again A may purchare 8 ans. of the tenure at the same time he purchases the estate and B may purchase the other 8 ans. one year after his purchase of the estate jointly with A. Moreover A might have succeeded as an heir to the 8 ans. of the estate and purchased 8 ans. of the tenure and B might have got by will 8 ans. of the estate and obtained the 8 ans. of the tenure by gift some time after A purchased the 8 ans. In such cases questions will arise as to whether any merger can at all take place, and if so, when?

66. The principle of merger as taken from the civil and the English laws is quite unknown in the moffussil. The provision by its novelty is likely to cause some difficulty and some injury to people holding two rights in the same property at one and the same time. If the principle be extended to the moffussil it will take time to be well understood by, and to be rooted in the notions of, the people. It is a thing which they will not easily comprehend and this will cause mischief by over and under valuation of properties sold either privately or in execution of decrees. The question of intention and proof of the declaration of such intention, will complicate litigation and embarrass transactions of sales and purchases. It is true that it is desirable that the complications in the shape of the same person having different rights in the same land at one and the same time, be avoided or even rooted out. But as the principle of the foreign laws has been taken in its integrity, no such good result can be hoped for. The principle embodied in the Bill is of the incorporation or extinction of the inferior right in the superior, when the superior right-holder subsequently comes to be the owner of his immediate inferior right. But an equal number of complications will remain untouched in the cases of inferior right-holders subsequently becoming owners of immediate superior rights. Such cases are not governed by the principle of merger. And thus after a length of time questions will arise as to which right was owned first. Hence it is not possible to avoid all complications of this sort. If anything must be done in this direction, provision should be made for the extinction of the inferior right in every case of ownership of the superior and its immediate inferior right by the same person at one time. It does not make any great difference so far as utility is concerned whether the tenure was possessed first or the estate.

67. Three months would be a short time as given by clause (b) of section 43 for declaration of the intention to keep the two rights separate. At least 6 months' time should be given. Before 6 months the landholder can scarcely know all the facts and circumstances relating to his new acquisition, and before that he cannot,

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properly speaking, make up his mind as to the course he should adopt. Provision should also be made to the effect that if any question arises within the aforesaid 6 months as to whether any tenure has merged or not, it should be decided in the negative and that no presumption of merger is to arise within the time allowed to choose a course. The last sentence of this clause commencing with the words "and by proof &c.," should be expunged. The publication of the deed in the manner provided is really not of much use. But the great objection to the provision is the utter impracticability of keeping evidence of such publication for any great length of time. Such evidence can easily be got up by unscrupulous persons. But those that have scruples will suffer on account of the obligation to prove this additional fact. The question may arise some 12, 15 or 20 years after the act. Hence for unscrupulous persons this will be an inducement to get up false evidence and for honorable persons it will be a bar to their success for no fault of theirs.

68. Section 45 seems to be out of place in this Bill and also unnecessary. The illustration which makes a distinction between rent and revenue will raise grave doubts as to the status and rights of ryots in Government *khasmohals*.

69. The objections against transferability of rights of occupancy would necessitate some changes in the wording of the sections of Chapter 8. The personal liability spoken of in section 48 seems to be contradictory to the provisions contained in section 64. If it means subject to the provisions of the latter section, then it is not of much importance or efficacy. It may be said to be merely nominal. The whole tenure or under-tenure or holding remains liable for the arrears whether the same accrued before or after the transfer. The question of this divided liability may be of importance in any case that may arise between the transferer and the transferee as to their respective liabilities. But as between landlord and tenant the question is not of any great importance, cannot the landlord proceed at the first instance against the defaulter? The words "reasonable time" used in clause (c) of section 48 are very vague. There seems to be no very great reason for not fixing a term within which the notice must be given.

70. The limitation prescribed in the latter part of section 51 is variable—the longest being two years, when the succession or transfer has taken place on a 1st of Bysack; and the shortest being one year when the succession or transfer has taken place on a 30th Choit. It is therefore submitted that one fixed term of one year may be provided for the case in question.

71. The finality of the Judge's order under section 53, clause (c), is objectionable. The old law did not provide an appeal, but in the interest of both the landlord and tenant an appeal should be allowed.

72. The proviso contained in the italicised words in the latter part of section 56 should be expunged. These words will simply leave a loop hole for dispute. The payment of a small interest on making a default for whatever cause it may be, cannot be said to be very hard on the ryot. Although, properly speaking, there can be only very rare cases in which it may be reasonably urged that the ryot was prevented by causes beyond his control from paying his rent, yet the very existence of such a provision to meet such very rare cases, would be a source of dispute. It is therefore submitted that this portion of section 56 be expunged.

73. In sections 58 and 59 the words "and Cesses" should be inserted after the word "rent" wherever the same is used. It is doubtful whether the definition of rent would include the Road and Public Works Cesses imposed upon the tenant and payable by him through the landlord. In section 58, clause (b), the words "or their agents" may be inserted after the words "such co-parceners" and before the word "therefore."

74. The words "full acquittance" used in section 60 will probably create some difficulty and doubt. How can the receipt for the amount deposited be held to be a "full acquittance" of the rent payable by the tenant before the question of the amount payable is determined. It is true that section 59, clause (c), provides that the full amount of rent due shall be deposited. And it is also true that the officer receiving the deposit is to take the amount in com-

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pliance with the provisions of section 59. But as the officer charged with this duty has no enquiry to make, he cannot be satisfied that the requirements of the sections have been complied with. He has simply to go upon a declaration of the tenant or of somebody on his behalf. The tenant may either intentionally or unintentionally deposit a less amount. It is therefore submitted that the words "full acquittance" should be expunged or so qualified as to mean only an acquittance as far as the amount paid covers. The meaning intended is no doubt what is contended for, but the manner in which the words have been used may lead to some dispute.

75. In order to simplify matters and avoid delay and circumlocution, the words between the word "forthwith" and the word "cause" in section 61 may be expunged. It is not at all likely that the notice served according to the provision of the portion wanted to be expunged will be effective. In the court of the officer receiving deposits there will be innumerable notices and it is not probable that any notice specifying a deposit will attract attention. It is also not very probable that all landlords will have proper persons in such courts to look after such notices.

76. By section 64 the landlord is forced to put up an occupancy-holding to sale for the recovery of his arrears. In the case of tenures and under-tenures this may not act prejudicially to the landlord or the tenant. For in such cases the amount of the arrears is sure to be realized even leaving a balance in the surplus proceeds of the sale in favor of the tenant. Payments are very likely to be made even before the sale actually takes place. But such is not likely to be the case in case of sales of occupancy-holdings. Where the village is thickly populated by cultivators, where the demand for land is more than the supply, there only an occupancy-holding will fetch a price that may pay the landlord's arrears and also have something for the ryot. But in places sparsely inhabited by agriculturists, where there is not much demand for land, the sale of the holding will not even pay the arrears. In the last class of cases it will be the interest of the tenant to defer payment of his rent as long as he can by cajoling the landlord by promises of payment, and unless the payment is forced by a sale every year, the landlord is likely to suffer a loss, without any prospect of ever being able to make it good. In the first class of cases, the tenant will be sold out and thus cast away from his home and hearth and possessions. Under such circumstances it would be advantageous to both parties if "occupancy-holdings" were excluded from the action of the provision contained in the latter part of the section. And if it be further provided that it would be optional with the landlord to put up the holding to sale or to realize the rent by other processes allowed by the Act, such a provision cannot be said to be prejudicial to the interests of any class. It gives only an additional remedy for the realization of the landlord's just dues.

77. Chapter 10 is another of the most objectionable chapters of the Bill, and contains some provisions very dangerous to landlords. Co-parcenary is an institution of the country. There are very few estates, tenures or under-tenures, which are owned and held by single individuals and not owned and held by co-parceners. In few cases only the co-parceners have joint management. Generally they collect rents and manage separately. There are also cases in which this is done in groups, by some co-parceners having joint collection and management separate from another group of co-parceners. There are again those who have a very large share or interest in such co-parcenary properties with persons who have only the smallest fractional shares. The blow that will be dealt against co-parceners by the provisions of this chapter, will reach all classes of such co-parceners and will be felt by all classes of landlords in the country. Instead of mending matters and instead of furthering the cause of peace, this chapter will be an instrument and a very dangerous one withal, to harass and virtually to ruin the majority of landlords. This will be the easiest method of dispossessing them from their lands and vesting the management of all private landed properties on the State. It will virtually make them idle annuitants, depending upon the allowance given them by the Court of Wards or the manager appointed by the District Judge. It will most arbitrarily take away their independence and divest them of their just and inherent rights.

In short, by embodying the mischievous principles of some rulings of the High Court, and by extending them further to subjects and cases not coming within their scope, and by re-enacting the provisions of a section of an almost forgotten and an almost obsolete Regulation half a century old, the Rent Law Commissioners have prepared an instrument which will bring about most harassing disputes and litigation, and encourage refractory tenants and even owners of infinitesimal shares to wreak their vengeance in a most wantonly manner.

78. Section 65 would include even joint owners having separate collections. It would thus force them to adopt joint management. It would make them amenable to the penalty provided by clause 2, even where there is the remotest likelihood of any inconvenience to the public or any injury to private rights arising from it. It would clearly empower the Judge if he chose to adhere strictly to the letter of the law to appoint a manager, where the slightest inconvenience to the public or the slightest injury to private right has ensued. These last words have been taken from the regulations as found there without any mitigation of their stringency. And on the contrary the words "sufficient cause" for such interference with private rights, to be found in the regulations, have been done away with without any thing better being put in their place. The provision in the Regulation which covered only estates has been made applicable to tenures and under-tenures. No provision has been made for an appeal against the Judge's order, and his order however unjust and arbitrary, remains final and conclusive. Such are the provisions of section 65 which give the same power as was given by the old Regulation to any body and every body who has any interest, however trifling, in the land to create a revolution in its management, or at least to drag its numerous co-sharers in court and harass them for a great length of time. By the wording of clause 2 of this section, the onus has been laid on the co-parceners to show cause why they should not appoint a common manager. The notice calling upon the co-parceners to show causes may be issued on the simple application of any person interested in the land in question. Nothing more need be done by the applicant. The whole burden is to be borne by the co-parceners. Then again no provision has been made allowing an appeal against the order made by the Judge. There is also no appeal against the appointment of a manager nor against an order refusing his removal prayed for on sufficient grounds.

79. By section 68 the District Judge will not be authorised, after the property has once been entrusted to a manager, to restore it to the co-parceners, unless they can satisfy him that they will manage the property jointly. No arrangement for separate management will serve the purpose, even if the same be calculated to ensure convenience to all parties concerned.

80. Section 69 has embodied the gist of some rulings of the High Court, and without making any improvement on the present law or affording any facilities for the realization of rent by co-sharers has left the law where it is. The word "parties" used in this section is vague, and it has become more so by the use of the word "defendants" in the 3rd exception to this section. It may on this account necessitate the making of the other sharers plaintiffs in the case, and this without their consent would be impracticable. Then again the question of cost, the difficulty of executing the decree and of realizing the plaintiff's dues would complicate matters to such an extent, that a suit for arrears by a co-sharer would be not only impossible in the majority of cases but even a decree will be almost valueless. The practice of making *proforma* defendants of the co-sharers who do not join, if allowed in such cases, and if the plaintiff be allowed to sue for his share of rent only, it would be a move in the right direction.

81. In Bengal where co-parcenary estates abound, such a provision is very necessary as far as the realization of rent is concerned. This may not be extended to the case of enhancement of rent, unless the plaintiff can show separate collection. Such a provision is objected to on the ground that it would be giving the instrument in the hands of co-sharers to harass the ryots. But how the ryots are harassed it is difficulty to understand. It is the duty of the

ryots to pay their rents in proper time. If they pay up, no suit can stand. If the rent tendered by these is not accepted they can deposit the same. If they don't do either, they are to blame and they cannot find fault with the landlords for the suit or suits that may be brought against them. Yet if it is deemed necessary to protect the ryots from such apprehended harassment, provision may be made that in case of one suit by one sharer, the ryot would be entitled to deposit the whole arrears of his holding in case of decree, and notice of the deposit will be given to the other sharers at his cost. It may also be provided, as in exception 3, that in case of such separate suits, if the ryot can satisfy the court that the separate suits have been collusively brought by the sharers simply to harass the tenant when they could have brought one suit, the ryot will be entitled to get his costs.

82. Government has made provision for protecting the shares from sale for arrears of revenue in case he opens a separate account, but in this case when the management has been once joint, there is no remedy, save a costly *butwara* of the lands, to be completed in a number of years. It is therefore necessary that some provision should be made by which a co-sharer may once for all settle the question of his share, and separate himself from the joint body and manage and collect for himself. To make him dependant for this on the will and consent of the ryot would be not only unfair but would also be an unjust and unnecessary restriction imposed on the free enjoyment of one's own rights. In exception 1 to this section, the words "with the consent of the other or others of them," is most objectionable. If the tenant agrees to pay separately, there the objection as to harassment ends. Why the consent of the other sharers is to be taken to that agreement, and what is the object of and necessity for it, cannot be easily perceived. These words impose an additional restriction to those that already make the exception altogether useless by the impracticability of obtaining the consent of all the other sharers to a separate collection, even when the ryot's consent is obtained.

83. Section 70 is a very objectionable section. There is no exception to the provisions of this section even in cases of separate agreement or separate collection or collusion of the other sharers with the ryot. A co-sharer who has been all along collecting his rent separately from the others, and one who has got separate *kabulyats* for his share is most unjustly debarred by this section from making separate arrangements for his rent, if that rent happens to be an increased amount. He cannot make a contract for an increased amount even with the ryot's consent, and even when he has not the necessity of invoking the assistance of any court for the same. Why this liberty of action is to be taken away from the parties simply because the landlord has the misfortune to be a co-sharer, cannot be imagined.

84. This section also debars a co-sharer from making a private measurement of his lands at his own cost and without the assistance of any court. Why such a restriction is to be put upon the exercise of a right which does not injure any body, nor even harass any one, is also beyond comprehension. Even a co-sharer, who has separate management of his share, cannot measure the lands for settling his rent or in order to sue or defend himself against the suit of any body else. Although section 70 would go to show as if a suit for measurement only would lie, but actually there is no such provision made in the Bill. In no ordinary cases will this be allowed even if all the sharers are made parties. It is only where the landlord can satisfy the Collector that he is unable to ascertain the ryots who are liable to pay rent to him or the plots of lands for which rents are payable, that a measurement will be possible in the shape of a *settlement jamabandy*. That such a provision is quite ineffectual to meet all the requirements of measurement is apparent. The objection taken to the word "*parties*" in section 69 applies equally to the use of the same word in this section. This section virtually takes away all rights of property from the landlords who have the misfortune to be co-sharers.

85. As to enhancement, it is submitted that express provision should be made, giving authority to enhance rents separately, where there is separate collection or separate agreement, as well as in cases of collusion

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of the other sharers with the ryot. It would no doubt be a modification or rather an alteration of the existing law in favor of landlords, but it is undoubtedly a much-needed reform. At present an infinitesimal shareholder, who colludes with the tenant and who is hushed by a present or so, can very easily do material injury to the large shareholder. No notice of enhancement can now be properly issued, and no suit maintained for enhancement. This evil should be remedied. The present law gives an unfair advantage to the ryots over the landlords, and this for no fault of the latter.

86. Section 71 should be so changed as to give like authority to all landlords, and not only to proprietors according to their respective rights, or it should be expunged. The word "proprietor" in clauses 3 and 4 should be changed for "landlord," and the provision as to written authority, if preserved, should be on plain paper. The words "subject to the provisions of section 70 and," in section 75, should be expunged for reasons stated in the objections to section 70.

87. The word "permanently" in clause (a), section 77, should be expunged; this word will encourage ryots to change the condition of the land and thus deteriorate it for some time. This word will be the source of litigation and animosity between the two classes. The proviso attached to this clause should be expunged for reasons stated in the objections to section 29. Clause (b) of section 77 contains a very objectionable provision. It is an innovation of a most reprehensible character. This clause sets at naught the custom of the country, so dear to every class of its people. It allows the tenant to deteriorate the land and lessen its value, and thus lessen also the security of the rent for which the land is hypothecated. As has been already suggested by the Hon'ble Peary Mohun Mookerjea, the cutting down of trees will not only lessen the value of the land, but will involve the landlord in expenses to make the land useful either for replanting or cultivation. It is a provision not only objectionable on these private grounds, but also for public reasons. The work of years and generations is allowed to be undone at a moment by the provision contained in this section. It is a right which never belonged to the tenants, to which they never lay any claim and for which there has not been any dispute between landlords and tenants. In short, it is the creation of a new right in favour of the ryot without any necessity or justification. And, moreover, such a provision will give rise to endless quarrels and misunderstanding, without conferring on the landlord any compensation for the losses he will have to suffer.

88. The words "without objection made by" in clause 1, section 79, should be changed for "with the consent of." This alteration would be in keeping with the provision contained in clause 7 of this very section. The word "non-transferable" in clause 4 should be expunged. It does not matter whether the holding is transferable or not, if the ryot does not cultivate the land nor pay rent, and if he has gone away from the neighbourhood, the landlord should be able to make arrangements for getting its rent by letting it out instead of being forced to sue for arrears or put it up to sale, simply because a holding is transferable. The landlord is not bound to wait. It should be the tenant's look-out to take care of his holding, and not the landlord's to watch over it for him. The present law does not make any such distinction, yet no hardship is felt on that score. The word "non-transferable" in clause 5 should also be expunged. The law, as at present stands, gives the landlord a right to eject a tenant having a right of occupancy, which right is transferable in some places according to custom, or under a decree for arrears of rent in case of non-payment within 15 days. This provision is a salutary one. If the right is of such vaule as is likely to leave the ryot a balance in case of sale, then the ryot should also be able to protect the same by timely payment of the arrears. By expunging this word, section 152 of the Bill would be made applicable to all ryots. The provision contained in the first part of the second para of clause 5 is too wide. It would necessitate the bringing of a suit even in case of expiry of the term of lease granted to a tenant-at-will. The words "and not being such a ryot, as is mentioned in section 26," in clause 7, should be expunged for reasons stated against conferring rights of occupancy to ryots holding for more than 3 years.

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89. Sections 90 and 91. Why the landlord should get only 6 p. c. and the tenant 12 p. c. as interest, why this invidious distinction has been made, does not appear. The same rate of interest should be provided in both cases.

PART II.

90. THE procedure provided by Part II of the Bill for suits between landlords and tenants is faulty not only for the new complications created, but also for omissions of necessary provisions. The abolition of distraint is one of the most objectionable changes made in the Bill. The only ground on which this has been excluded is that the power given by the law has been abused in Behar. But as there are stringent checks to, and heavy penalties imposed on, such abuse, the law may be allowed to remain in the same shape as it stands, if nothing better can be done. There are still numerous provisions in this Bill, which may be abused either by or against the landlords, and these stand without such checks or penalties for their abuse. Hence the likelihood of an abuse is not a cogent or sufficient ground for abolishing a remedy in case of non-payment of rent, and this without any adequate measure being provided to supply its place. In cases of ryots having rights of occupancy, the provision for bringing the holding to sale may be said to be an efficacious remedy for the realization of arrears, but such a provision not being applicable to other ryots, there remains no adequate remedy for the realization of rents of such ryots. The existence of this provision has a salutary effect. It is not always necessary to resort to it or to invoke the assistance of courts to enforce it. Oftentimes the notice of distraint or even the threat has the effect of inducing the ryot to an arrangement for the payment of the rent. Even in case of ryots having a right of occupancy, the provision is beneficial. Instead of putting the holding to sale and selling the ryot out of his lands, it would be advantageous to him to have his crops attached and sold. As to other ryots, the crops are the only property the sale of which is likely to pay the arrears. Under such circumstances the present law and procedure as to distraint should be adopted in the Bill. It is also submitted that, if possible, some easier rules should be added which would give further facilities for distraint and for bringing the crops to sale. The penalties attached to unlawful distraints should of course remain intact.

91. The concurrent jurisdiction given to the Civil and the Revenue Courts to entertain and decide suits for enhancement and abatement of rents of ryots having a right of occupancy, is a new complication. This will not be advantageous to either party. When the landlord has sued for enhancement of rent of some ryots in the Civil Court, some other ryots may go to the Collector and sue for abatement. This would harass the landlord who would be obliged to keep two sets of servants to look after the cases pending before two different courts. Then again, there would be difficulty in furnishing evidence in two different courts, which may be situate at great distance from each other, at the same time. The two courts may come to diametrically opposite conclusions as to the prevailing rate or the productive power of the land. Moreover, the distinctions made in the different classes of cases in order to find exclusive and concurrent jurisdiction will result in frequent dismissals for want of jurisdiction. A suit for abatement by a ryot holding at fixed rates is cognizable by the Civil Court only (clause (b), section 153). A like suit by any other ryot is cognizable also by the Collector. If, by mistake, a suit under clause (b), section 153, is brought by a ryot holding at fixed rates in the Collector's court, it will have to be dismissed, and before that is done, the fact of such a suit being instituted in the Collector's court, will be liable to be used against the ryot to show that he does not hold at fixed rates.

92. There is no clear enumeration of the suits that are cognizable duly by the Civil Courts, those that may be preferred only to the Collector, and lastly those that may be instituted in both courts. Scanty provisions as to these are scattered over the whole of Part II. Although jurisdiction is given to the Collector to entertain suits for enhancement of ryots having a right of occupancy, yet no provision has been made as to the procedure to be adopted by him when the suit is against only one or two ryots. Sections 99 to 111 (both inclusive)

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relate only to cases where the proceedings are against the whole body of ryots. Clause (b) of section 119 relates simply to service of notice. There is no provision that the proceedings before the Collector are to be conducted according to the procedure laid down in chapter 18 of the Bill. The words "suits for the recovery of rent" in clause 1, section 165, it is submitted, cannot cover a case for "enhancement of rent" before the Collector. Section 120 provides only the making of rules by the Board of Revenue for conducting proceedings in order to prepare a Table of Rates, an enhanced *jamabandy* or a settlement *jamabandy*, so those rules cannot be the guides for individual cases of enhancement or abatement. Section 121, clause (a), makes it simply optional with the Collector to follow or not the procedure laid down in the Civil Procedure Code as to summoning witnesses on production of documents. Such unlimited authorities should on no account be given to any court.

93. No provision has been made as to how the decrees made by a Collector are to be executed. Generally speaking, the vesting of the powers to decide enhancement and abatement cases on the executive authorities is objectionable. The work will generally be done by Deputy Collectors of little experience and legal training. In these cases many important questions of right and law will arise, and to these such Deputy Collectors will be able to do scant justice. To engage qualified pleaders before such authorities will be more costly and difficult; generally, the cases will have to be conducted by revenue agents and moktears. The Deputy Collectors and Collectors had the trial of rent suits in their hands under Act X of 1859 for some time, and that trial caused many difficulties, and at last the Civil Courts were entrusted with the whole work, and they are performing the work to the satisfaction of all. For reasons submitted above, it is necessary that the procedure portion of the Bill should be recast and modified, and clear provision should be made that all suits that may arise between landlords and tenants should be cognizable exclusively by the Civil Courts.

94. The restrictions to enhancement imposed by the words "a landlord who has a permanent and transferable interest in land" in section 95, clause (a), and by the words "and if a period of not less than 10 years of such interest remains unexpired," in clause (b) of the same section, should be done away with. If the provision as to enhancement *jamabandy* be left in the hands of the executive authorities, provision should then be made that if in the course of its preparation, any question of right is raised between the landlord and any individual or body of tenants, that should be submitted to the Civil Courts for adjudication. No provision has been made or restrictions imposed on the Collector to keep intact the present *jamabandy* of the land. He may, if he chooses, lower the rates prevalent. It is necessary that some such provision should be made.

95. Section 104 makes it optional with the Commissioner and the Board of Revenue to hear or not the persons to be affected by the Table of Rates when passing final order on the same. That this is a most reprehensible provision is apparent, and as such should be left out.

96. The words "or special equitable considerations" in clause (a), section 105, are vague. If such a proviso is allowed to vary the rates mentioned in the Tables, there will be no end to litigation. It is also submitted there is no consideration provided under which the landlord may claim more favourable rates than those mentioned in the Tables. Under such circumstances the Tables to be of efficacy should be equally binding on both parties. It has been already submitted, and it is repeated again, that provision should be made by which the existing rates may not be shaken or lowered, nor any loop hole afforded to tenants for claiming abatement.

97. The provision contained in section 108, clause (a), as to the conclusive nature of an enhanced *jamabandy* is more objectionable than that relating to the Table of Rates. The only exception made is in case of addition or diminution of lands by alluvion or diluvion. But in places where there are uncultivated lands in the midst of cultivated fields, or where there are pieces of low lands close by, the ryots generally make encroachments on these lands. Again in *uthit patit* mehals there is necessity for measurement of lands and settlement of the *jamma* from time to time.

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Great injustice would be caused to landlords if the enhanced *jamabandy* is held to be conclusive evidence of the amount of rent payable, and if no further enquiry is allowed in the last mentioned cases, or in other words, on the ground No. 2 of section 22. Again, there appears to be something more objectionable in the provision of this clause. A contract made by a ryot, to pay an amount more than what is stated in the enhanced *jamabandy*, would not be binding if made within the fixed period of 10 years. Why such a restriction is imposed on private contracts, cannot be easily explained. In the course of things no ryot would make such a contract, but if on account of good reasons the ryot does it, why should not that be enforcible. The foregoing remarks and objections apply equally to the like provisions contained in clause (a) of section 111 It is therefore submitted that the provisions should be so altered that no injustice may result at least in the aforesaid cases.

98. The sentence "the provisions of clause (a) of section 108 shall apply to such settlement *jamabandy*" in section 113 is very objectionable. This makes a settlement *jamabandy* conclusively binding between the landlord and tenant for 10 years, and restricts any enhancement or abatement during the said period. In the first place it should be borne in mind that the Table of Rates and the enhanced *jamabandy* apply or relate only to the ryots having a right of occupancy. Such is not the case with a settlement *jamabandy*. This applies to all classes of ryots whether they be tenants-at-will, or those that have been occupying for more than three years, or those that have acquired a right of occupancy. How then can such a settlement *jamabandy* be made conclusively binding for 10 years. Again, even in case of ryots having a right of occupancy, this restriction is quite inapplicable. The settlement *jamabandy* simply states the rent paid and the quantity of land held by the ryot. It does not make any enhancement of rent. The rent stated in it may not have been changed for the last 30 years. The landlord, perhaps a new purchaser, is unable to ascertain the ryots and the rents payable by them, as also the quantity and plots of land held by them; so he seeks the aid of the court in the same way as he would under section 38 of Act VIII of 1869 (B C.) Why then is he to be bound by the record of such an enquiry for 10 years is undoubtedly beyond comprehension. It is true that there are words, *viz.*, "either in excess of the former rent or rates or otherwise" in the latter part of section 113 which indirectly authorize the Collector to declare that the landlord shall be entitled to receive rents at rates which may be in excess of the former rates, but properly speaking, this would be beyond the scope of the provisions of the sections. In a case for a settlement *jamabandy*, the Collector is to enquire into the prevailing rates and the rents paid by the ryots, but he is not to enquire what grounds there exist for enhancement. The landlord would not be in a position to adduce any evidence whatever for such a purpose. Again if the Collector is authorized to award an enhanced rate or an increased amount, then it no longer remains a settlement *jamabandy*, but virtually becomes an enhanced *jamabandy*. These objections apply equally to section 114 as far as they make the provisions of section 111 applicable to the settlement *jamabandy*. It is also submitted that the word "ryots" used in sections 112 and 113 should be changed for "tenants." The provisions as to settlement *jamabandy* are virtually a reproduction of section 38, Act VIII of 1869 (B. C.) with modifications. It is therefore necessary that the record should be not only of "ryots" but of all classes of "tenants."

It is necessary to repeat here that save and except a measurement by Collector in order to the preparation of a settlement *jamabandy* there is no other mode of measuring the land through the court in case of any resistance or objection. This is so even as to sole owners. As for a sharer he can neither measure himself nor ask the assistance of the courts to do that for him.

99. Costs for the preparation of a Table of Rates should be borne equally by the landlord and the tenants if not by tenants only. This procedure as to preparation of a Table of Rates is virtually a mode of enhancement of the rent of a whole body of tenants. If costs can be realized in enhancement suits from tenants against

whom a decree is made, why should not they be made liable for the costs of the preparation of a Table of Rates. Again in enhancement suits the dispute ends with the decree for enhancement; here another suit is necessary for the enforcement of the Table of Rates. Further, the Table of Rates once framed gives a license to the ryots to enjoy the profits of the land for a number of years without any further molestation or even any risk of enhancement.

The Table is moreover his charter, wherein is recorded his right of occupancy determined once for all, and as such is a conclusive document in his favor and against his landlord. Under such circumstances it is he who reaps the greatest advantage by the Table of Rates. For these reasons it is submitted that the ryots should bear at least half the costs, if not the whole, for the preparation of these Tables. If no such provision is made the heavy cost necessary to have a Table of Rates framed will be a reason which will deter landlords from resorting to the procedure provided for the same. They would rather choose to bring solitary enhancement suits and thus not only harass the ryots but realize as much of the cost as they can.

100. No provision has been made as to the costs of a settlement *jamabandy*. The necessity for such a record is occasioned by the fault of the tenants, and therefore the whole of the costs for the preparation of such a record should be borne by them. If the Collector is obliged to make detailed enquiry owing to the tenants not responding to his call or not furnishing him with true information, at least in that case they should be saddled with the whole cost of the preparation of the *jamabandy*.

101. It is true that a very wide discretion has been given to the Collector in section 121 (a), for giving and apportioning costs, but it is apprehended that the same may not cover the cases mentioned, or that in the absence of express provisions the Collector may not be willing to exercise his discretion in these matters.

102. In clauses (a) and (b), section 123, the word "tenant" should be used for the word "ryot." Clause (a) of section 127 should be expunged altogether. If the pay of Government officers like the Collector or the Deputy Collector be realized by Government as costs for the preparation of a Table of Rates and an enhancement *jamabandy*, &c., then there will be no cases at all in which the Collector will be asked to make any thing of the kind. These records are, properly speaking, for settlement of disputes between landlord and tenants, and it is the duty of Government to do it by its own officers. After the payment of so many taxes and so much expence for litigation which now-a-days has become almost unbearably heavy, if the pay of such officers is taken or wanted, it would be virtually shutting the door of justice and forbidding settlement of claims of the contending parties.

103. Section 128 should be altogether expunged. The provision as to costs for the preparation of the enhanced *jamabandy* contained in section 106(a) should be modified so as to entitle the landlord to recover the whole of the cost for the preparation of such a record. It would be the greatest injustice to disallow the cost of such a proceeding or to curtail it in any way. The provision which allows the Collector to distribute the cost over three years is most objectionable. Even the rent enhanced would not cover the ordinary interest on the outlay necessary to get a Table of Rates and an enhanced *jamabandy* made. Taking into consideration the various restrictions and limitations imposed on enhancement, and the length and delay of the proceedings in connection with it, and lastly the amount of the cost necessary to bring the same to a successful termination, it is but fair that the restrictions and qualifications as to costs contained in the aforesaid sections should be done away with.

104. Section 130 is vague. The suits mentioned in the same may be simple suits for arrears of rent. It would be complicating matters if such suits are allowed to be tried by Collectors. It is true that in such suits the question of rate, of the quantity of land and the classification of the same may be in dispute, and that these questions may be dealt with by the Collector as a case of settlement *jamabandy*, but then there is no adequate procedure laid down in the Bill by following which the Collector may do full justice to such cases.

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Many of the provisions relating to settlement *jamabandy* would be quite inapplicable to such cases. Then again the question of and procedure in appeal would be of some difficulty. It is submitted that in order to keep uniformity of practice and procedure in the two courts, this section may be left out. It should also be borne in mind, that in all probability no such transfer will be made, as it cannot properly be made, before the defendants have filed their written statements. If therefore the transfers are made after the same, it would be harassing the parties very much. They would have to incur a good deal of cost till then, and all this would go for nothing. Not to mention that the expenses for attending the courts, payments to pleaders, expenses for issuing summons on witnesses, &c., would go for nothing, and the cases would have to be begun anew with a new staff of agents, and this may be at a quite different place. If yet it is deemed expedient to have some enquiry by the Collector on the subject-matter of these cases, some provision may be made by which the Civil Court may be authorized to ask the Collector to make an enquiry and report the result to the Civil Court. This, it is submitted, would be less expensive and less harassing to the parties. It may be here observed that in all such cases the Collector or even the Deputy Collector will rarely go to the locality; the whole investigation will be done by a *Kanoongo* or at most by a Sub-deputy. This may as well be done by a Civil Court Ameen Hence very little gain will result from transfers.

105. The words "*khudkast* ryot" used in the provisos to sections 142 and 210 have not been defined in the Bill. These words have been put in as found in the old regulations. The qualification added to the provisos and the other provisions of the Bill make it unnecessary to keep these undefined words in the provisos.

106. The Government has from time to time pledged itself to the landlords of the country that it would devise some measure by which facility of realizing rent might be ensured to the landlords. With this very object in view a summary procedure was also framed. Now that so many important concessions are proposed to be made in favor of the tenants, and so many rights and privileges are proposed to be granted to them, all at the expense of the landlords, it is but natural that they (the landlords) should look for some advantage given to them in return. The most important point that touches them daily is the realization of rents. If they find that great facility has been given them in this respect, they can to some extent bear their loss in other ways. Clear and indisputable provisions as to enhancement is another important subject which concerns them most. As to this last there has been no improvement made in the draft Bill; on the contrary, some very objectionable provisions have been proposed, which would restrict the application of the existing principles of enhancement. Then as to the realization of rent, no facility has been given. Even the existing summary procedure as to distraint has been done away with, and a so-called abbreviated procedure in rent suits has been provided. This abbreviation consists virtually in recording evidence. It is necessary only to refer to it here simply for the purpose of showing that, properly speaking, the Bill does not afford any facility whatever for the realization of rent. All the difficulties in obtaining a decree and the greater ones of executing the same remain unremedied. It is therefore that some suggestions are submitted here below with reference to this important question, *viz.*, realization of rent.

107. By section 64 every landlord is bound to bring to sale the tenure or under-tenure or occupancy holding, the arrears of which he wishes to realize. Why not then extend the procedure contained in chapter 16 as to summary sale (of course with necessary modifications,) to all tenures, under-tenures and occupancy holdings which are liable to be sold for arrears of rent. Such an extension would, it is submitted, be a move in the right direction. That such a procedure would be less costly and less troublesome to all parties concerned cannot but be admitted.

Now that provision has been made for keeping counter-receipts and for the yearly settlement of accounts and statement of rent, no great difficulty will be felt in summarily adjusting any dispute that may arise as to the amount of arrears due, before the sale actually takes place.

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It is also to be remembered that the sale is to take place at the risk of the landlord. He may also be made liable to damages in case of any fraudulent abuse of the power given him. Provision may be made as to such sales being conducted by Civil Courts, and this if not twice, at least once a year and that on the 1st of Baisack.

The arears becoming due on the 1st of Choitra, the landlord may apply on the 2nd of Choitra for a notice of sale which should be served on or before the 10th of Choitra. The tenant may be required to file his objection if he has any to make within 7 days from the date of service of notice, and the landlord may be required to be in attendance on the 7th day after the service of the notice, with his account, and a summary enquiry may be made as to the amount of arrears, and orders passed accordingly. As to tenures and under-tenures held at fixed rents this procedure will not be at all difficult. Provision may be made that the sale will not be confirmed before one month, and within this time any pending enquiry may be finished, and any further objection as to the sale may be enquired into.

108. Sections 191 and 192 contain the most important provisions which summarise the procedure in rent suit. But it is submitted that when there is nothing else of any importance to accelerate the trial of the suits it would not be safe to allow only the gist of the evidence of witnesses to be taken down and hold the same to be sufficient for the case. Such a procedure would be injurious to both parties when the case would go to the Appellate Court. When an appeal is allowed and when the same is not restricted to points of law or construction of documents, but when the same depends in every case on the weight of evidence, it is not proper to clip the evidence by such a summary procedure. It does not benefit the parties much, but gives a very uncontrollable discretion to a judge as to taking down what he chooses out of the deposition given.

109. The provisions contained in clause (b) of section 203, and in section 206 and in section 207 are the most complicated of all the provisions contained in the Bill. These provisions will not only cause delay, expense, and trouble in realizing rents, but will also increase litigation, fraud and perjury. In the face of the provision contained in clauses (c) and (d) of section 205, such complications are quite unnecessary and uncalled for. It should be the look-out of holders of such encumbrances as is mentioned in section 206 to protect themselves by resorting to the procedure provided by clauses (c) and (d) of section 205. If they fail to take advantage of these provisions they have none to blame but themselves. There appears to be no good reason why the landlord is to be put to the risk of undergoing more trouble and expense when the defaulter has chosen to create encumbrances. It is also very curious that the sale of a tenure in a summary way will avoid all encumbrances (*vide* section 112), but the sale of the same tenure under a decree is not to be with the same results. There is neither any authority nor any just or sound principle to support such a distinction.

110. The explanation contained in section 206 will be a fruitful source of litigation. There will be constant disputes as to receipt of notice which it would be difficult to prove. The landlord will have an inducement to side with the encumbrance-holder or the purchaser as will serve his purpose best, and generally his *Amlas* will make the best out of it. Then again the encumbrances created long before the Registration Acts, when registration was not compulsory, cannot be notified to the landlord under the provisions of this explanation, and these are to be annulled for no fault of the holders, while subsequent registered ones are to be saved. For the above mentioned reasons it is submitted that the complicated provisions as to sale with and without encumbrances, should be modified and the law on the subject of encumbrances should be uniform in both the cases, *viz*, in summary sales and in sales in execution of decrees. A provision should also be made as to the registration of such encumbrances in the zemindar's *shirista* by the payment of a fee in case where the zemindar finds his rent secure.

111. The proviso to section 210 is objectionable as far as occupancy holdings are concerned. If the purchaser of an occupancy holding at a sale for arrears of rent cannot get *khas* possession of the lands from the hands of the under-ryots, then the value of occupancy holdings is very

little indeed. This provision promotes sub-infeudation, and will create a class of middle-men. It should be expressly provided that in case of sales of occupancy holdings for arrears of rent, all engagements made by the defaulter or his predecessor in title are to stand cancelled as far as a *bonâ fide* auction purchaser is concerned.

112. The limitation contained in rule 3, section 211, as to the landlord not being entitled to more than six months' rent after the date of the decree is very objectionable. Such a provision is not only against the interest of the landlord, but is also prejudicial to the tenant. This provision will force the landlord to put the tenure to sale immediately after the decree. Any time allowed by him to the tenant to pay up amicably would be detrimental to his interests. For in case of non-payment he is to be a sufferer for the indulgence shown. In the case of landlords it would appear that even where he is very active he may not be able to obtain the confirmation of the sale within 6 months from the passing of the decree. The search to be made in the registry office in order to make an affidavit to bring the property to sale, the delay necessary for issuing the attachment and sale proclamation, then the possible objections to the sale, and lastly the objections to the confirmation after the sale has taken place, will take up more than 6 months. If over and above this the complicated provisions of sections 206 and 207 be taken into account it is evident that the landlord cannot expect to realize his dues before a long time. If under such circumstances the landlord is limited to only six months' rent after decree he will have to suffer a loss for no fault of his own. It would be rather just and proper that he should get all his rent due down to the date of confirmation of the sale, from and after which date the purchaser would become liable to him.

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No. 1329GR, dated Monghyr, the 27th September 1880.

From—W. H. D'OYLY, ESQ., Officiating Collector of Monghyr,

To—The Commissioner of the Bhagulpore Division.

WITH reference to your memorandum No. 1945R, of the 2nd ultimo, calling for a report on the Rent Law Commission's Draft Bill, I have the honor to submit the following remarks.

2. I have discussed the principal changes proposed to be introduced by the Bill with some of the leading zemindars. These gentlemen promised to let me have in writing expressions of their opinion on the several questions raised, but they have failed to do so, and I cannot delay my report any longer for their replies. I have called for and received reports from subordinate officers, and I have had special enquiries made in the registration office and elsewhere regarding tenures, such as those defined by section 11 of the Bill.

3. Though undoubtedly, as you say, examples of "ryots holding more than 100 bighas can be found from any part of every district," still sections 11 and 12, and therefore sections 8, 9, and 10, would not apply to such cases, "unless the land exceeding 100 bighas has been demised by a *single* demise, *otherwise than for a term, or year by year.*" Neither the sub-registrar, nor the sub-divisional officers, nor the Joint-Magistrate, have been able to discover a case to which section 11 would apply *in its present form.* There are in this district the following tenures, viz.—

Ghatwali		...	...	(Rent-free.)
Jageer		...	...	(Ditto.)
Lakhraj		...	...	(Ditto.)
Mokurriree		...	...	(Fixed rates.)
Dur-Mokurriree		..	...	(Ditto.)
Gorabundee		...	...	(Ditto.)
Mustajri, or thika		...	...	(For a term.)
Kena	rare	...	...	(Ditto.)
Kut-kena	do.	...	...	(Ditto.)
Dur-kut-kena	do.	.	...	(Ditto.)
Se-kut-kena	do.	...	...	(Ditto.)

But they are all held either (1) rent-free, or (2) at fixed rates, or (3) for terms. Section 8 would only apply to (2), while sections 9 and 10 would apply to none. Where ryots hold more than 100 bighas it is generally found except in the case of mokurrirees, that they did not acquire the whole of the jote *by a single demise.* I do not myself see the object of retaining section 11, nor do I see why the provisions of sections 8, 9, and 10 should not be made applicable to ALL tenures whatever their size may be. The Commission wish to make a "distinction between tenure-holders and *ryots,*" and they proceed to define the word *ryot* by restricting its meaning in a way which is not in accordance with custom. It would be far better not to use the word "*ryot*" at all. Why should it be used any more than its synonym "*preja*"? Both words mean persons to whom favour is shown, and hence to whom grants are made. The "*ryots*" or "*preja*" may be persons holdings immediately under a proprietor, or he may have any number of grades of *ryots* or *prejas* between him and the proprietor. The ryot is, like that torment to all domestic animals, the "*pulex irritans,*" who, itself a diminutive animal, has still smaller animals of a similar description dependent on it; while they in their turn have still smaller dependent tormentors, and so on *ad infinitum.* It seems to me that the only distinction that is necessary is that between landlord and tenant, *malik* and *ryot,* and I would treat as landlord, first the proprietor of a mehal or a person who stands in his place, for instance a mustajir or thikadar or ijaradar or their sub-lessees; secondly, holders of tenures which consist of an entire mouzah or of two or more entire mouzahs. The proprietors I would call superior, and the others inferior landlords. All holders of land under these two classes should be termed tenants, whatever might be the size of their holdings. According to present custom a sub-tenant cannot obtain occupancy rights. The landlord looks to, and holds responsible, the tenant to whom he has given lands for the rent of those lands. If the tenant gives a sub-lease of the whole, or of a portion of his lands, his responsibility does not cease, nor is there any change in the relations between him and his landlord. He can obtain a right of occupancy after having paid rent for 12 years continuously, if he has cultivated the land at first for a year or two only, and then sub-lets it; while his sub-tenant cannot get a right of occupancy. This I have ascertained in cases which have come before me in this district. But I see no reason why the actual cultivator (kashtkar or chasa) provided he is not merely a paid labourer, should not be the person who should be allowed to acquire a right of occupancy; and I would suggest that a section should be introduced declaring that no tenant holding more than 100 bighas could acquire or retain a right of occupancy, but that the *sub-tenants* of such tenants could obtain such rights after cultivating, either themselves or by hired labour, for more than three years. We could thus obtain the results sought by section 11 of the

Bill without the complications made by trying to distinguish between ryots and tenure-holders, and by introducing the conditions regarding a single demise.

Chapter IV also would be unnecessary.

4. As regards the provisions of Chapter IV, I certainly think that it is unnecessary to retain this chapter, as shown above.

5. As regards section 19, explanation 8 (*a*), I see no reason why sub-tenants of mokurrerecdars and istimrardars should not acquire rights of occupancy. I would go further and say that sub-tenants of all tenure-holders, whose holdings exceed 100 bighas, should be able to acquire occupancy rights (as I have above said). This would simplify matters much. I would not allow contracts to interfere with the acquisition of occupancy rights.

6. As regards section 20 (see paragraph 9 of the Bengal Government letter under reply), I have always advocated the making of occupancy rights transferable by law, as they generally are by custom. The prohibition to mortgage the holding will be ineffectual, as a mahajun can always make arrangements. The occupancy ryot has the power to sell or to transfer by gift, and the mahajun would not advance unless he could secure the transfer of the holding by a deed to be used if the debt is not repaid. If, however, a ryot refused to make some such arrangement, the mahajun would not advance, and the ryot, unless he could get half from his zemindar, would be reduced to extremities and would have to sell his holding. I would *most strongly* urge the necessity of making the transferee responsible for all rent due on account of the holding transferred, otherwise landlords will be cheated. If, when an occupancy ryot gets into difficulties and owes, say nearly three years' rent to his landlord, he suddenly absconds, having sold by private arrangement his holding, how is the landlord to recover? unless the purchaser purchases the holding with its liabilities, and unless this is provided for by law a great injustice will be done to land-holders. The transferee should not be allowed to get possession till all arrears of rent due on the holding have been paid up; for a dishonest occupancy ryot to escape payment might by a "benamee" transaction transfer his holding to a man of straw.

7. As regards Chapter XI, I have ascertained that the local customs in this district are as follows—

If land, from which a ryot is evicted, has been cultivated by him, he is entitled in some pergunnahs to the whole, and in other pergunnahs to one-half of the produce. Then as regards trees, ryots who have leases giving them the right to plant trees can only claim half the produce of the trees, but cannot cut down or sell the trees without the zemindar's consent. Ryots having permanent transferable interest in land have the entire right over trees of their own planting. *Tal*-trees, from which tari is extracted, situated on lands paying revenue to Government, cannot be cut down without the consent of the excise authorities; while such trees situated in revenue-free estates are entirely at the disposal of the lakhirajdar. As regards section 77 (*a*), I think a ryot ought not to be allowed to make tanks without the zemindar's consent, and as regards section 77 (*b*) tal-trees should be excepted.

8. The provisions of Chapter XII might well be extended to Monghyr, but I think that the last sentence of clause *b*, section 84, is highly objectionable. It places the poorer ryots entirely at the mercy of the rich zemindar. In this both Mr. Martin, the Sub-Divisional Officer of Jamui and Mr. Middleton, a Deputy Collector of considerable experience, agree with me, and I would most strongly urge the striking out of the sentence alluded to. It would be bad enough for a poor ryot to have to run the risk of having to pay the cost of the enquiry ordered by the Collector, but if after that he is to be still further liable to a suit in a civil Court, he is entirely in the power of his zemindar.

9. I have no further remarks to make beyond this that I would confine the new procedure before the Collector (Chapter XV) to cases for which it was intended, viz. where resistance is offered by combinations of ryots.

10. I have sent to you demi-officially in original the reports of the Joint-Magistrate and of the sub-divisional officers of Jamui and Beguserai.

No. 782G, dated Purneah, the 24th September 1880.

From—J. Pratt, Esq., M.A., Officiating Collector of Purneah,
To—The Commissioner of the Bhagulpore Division.

I have the honor to submit my report on the Draft Bill to consolidate and amend the law of landlord and tenant within the territories under the administration of the Lieutenant-Governor of Bengal.

2. Before reviewing the sections of the Bill in detail, I have to make some observations of a general nature.

3. I consider that the Bill utterly fails in one of the two objects for which the Government directed that it should be framed. It no doubt "amends the law relating to rent," but it does not "provide for the more speedy realization of arrears of rent." Take it all-in-all the Bill is a one-sided measure. What does it give the landlord which he did not possess before? an improved procedure for the enhancement of rent

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and some equitable provisions touching the registration of transfers of tenures, under-tenures, and occupancy holdings. It takes away from him the right of distraint, and gives him nothing in its place. The first requisite of an improved rent law is an easy and inexpensive procedure for securing the prompt payment by tenants of rents which are virtually undisputed, or which have been previously paid. The present Bill not only makes no attempt in this direction, but actually curtails the means of realizing rents hitherto available to the landlord.

4. The Bill further encroaches on the landlord's interests by providing for the extension of the right of occupancy—(1) to sub-ryots who have held or cultivated land otherwise than for a term under occupancy ryots; (2) in a qualified form to ryots who have held land for only three years.

The permanent settlement was doubtless a gigantic blunder. It is to be deplored that the State relinquished its proprietary right in the soil in favour of mere middlemen who had no claim to anything beyond a fair remuneration for collecting the State demand from the cultivators. Still the great fact must be recognized that those men were made proprietors. The State no doubt reserved the right of making laws for the protection and welfare of the ryots; but having practically slept upon those rights for a period of 66 years, by which time the bulk of the landed property had passed from the hands of the original zemindars or their heirs into the hands of purchasers for valuable consideration, the legislature by enacting section 6 of Act X of 1859 caused (to use the words of Justice Trevor) "a great infringement of the law previously existing." The right of occupancy has now, after 21 years, become so firmly incorporated into the constitution of things that no one would advocate its destruction; but I do strongly deprecate any further extension of the principle, involving as it would a further encroachment on the landlords' vested interests without any equivalent advantage being conceded to them.

5. I think the Bill should be referred back to the Commission to incorporate provisions for the speedy realization of rents. When the ryots of several mouzahs band themselves together to resist all payment of rent, even though they abstain from killing or maiming any zemindari amlah or peons who may have the temerity to approach (a state of things which has occurred in my own experience in some of the Bengal districts), it is simply impossible for the zemindar to sue each individual ryot in the civil Court. He would often be ruined before the process was half through. There should be some provision whereby a landlord might be empowered to sue all or any number of the ryots of the same mouzah in one suit. If the Court finds no reason for discrediting the jumma-wasil-baqi and other evidence adduced by the landlord, the decision arrived at in the instance of a few ryots selected at random should govern the result against all the other ryots of that mouzah. If any individual ryot whose particular case has not been separately enquired into is dissatisfied at the general decision which has been applied to his case, he should be at liberty to sue the landlord for a declaration of the annual rent payable by him, and should in such case be compelled to deposit in Court a year's rent as claimed by the landlord, which sum should be forfeited as a penalty in the event of his failing to establish his claim.

On the other hand if the Court is unable to place reliance on the evidence adduced by either party to the suit (as not unfrequently happens), it should not be permitted to give what is called a "kabula decree" in accordance with the admission of the ryots (who in such cases often state merely nominal rents), but should be authorized to refer the whole proceedings to the revenue Courts for local enquiry and for framing a jummabandi.

6. Turning now to a consideration of the various sections of the Bill, I venture to offer the following remarks—

The definition of "ryot," and the doctrines propounded in paragraphs 20, 21 and 22, of the report, do not commend themselves to my judgment. As Mr. Hopkins has remarked "the distinctions made are too artificial to be practicable." A large class of mustajirs or farmers, who are simply middlemen, having the right to collect rents for a term or series of terms, will be exalted into a proprietary status contrary to existing custom.

7. Section 11 is contrary to good policy and sound doctrine, because it overrides established custom, and even express contract. Further, the reasons which make it advisable to limit the right of transfer of an occupancy holding apply with equal force, whether the holding be less than or greater than 100 bighas. The landlord's discrimination in selecting good tenants to whom to make demises of large tracts of wâste land for the purpose of gradual reclamation, will be utterly disregarded, and rendered nugatory, if such tenants are allowed to sell their interest to speculators or rival landlords. To protect himself the landlord must demise for a term only with the result that the tenant will be chary about making great improvements, the fruit of which he can only partially reap himself, and thus the law enacted to encourage agricultural improvements would defeat its own object. It is not the permanent nature of such tenures and under-tenures that is open to objection, but their transferability otherwise than with the express consent of the landlord.

8. The limits of enhancement laid down in *sections* 9 *and* 12 for tenure-holders and under-tenure-holders do not appear to be discussed in the Law Commission's report.

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The exact percentages are matters of detail, which can only be settled in Committee; and I am not prepared to suggest any alteration on those proposed. The grounds on which the rate of rent of tenure-holders and under-tenure-holders may be enhanced are not set forth with sufficient precision in section 9. Too much is left to the discretion of the Court. It is also worthy of remark that only the *rate* of rent, not the rent itself is provided for. In the case of ryots cultivating more than 100 bighas and elevated into the status of tenure-holders or under-tenure-holders by section 11, there seems no valid reason why enhancement should not be claimed on any of the four grounds mentioned in section 22.

9. *Sections* 6, 7, *and* 8 are in accordance with the existing law, and should be retained. Section 10 seems fair.

10. Section 13 is objectionable in so far it relates to tenures and under-tenures created by section 11. This has been discussed above in paragraph 7, and will be further dealt with by implication in considering section 20 relating to the limited power of transferring occupancy holdings.

Sections 14, 15, 16, and 17 re-enact the existing law in clearer terms. Section 18 is an equitable provision.

11. With regard to section 19, I would observe that it is the practice in many districts to take kabuliats from ryots for fixed terms, which are renewed or not at the pleasure of the landlord. In this way the accrual of the right of occupancy has been prevented If the landlord discovers that the law will no longer permit him to take advantage of the ordinarily accepted incidents of a lease for a term, then he will resort to the expedient of refusing to renew the tenancy *immediately* on the expiration of the term; and thus by breaking the continuity of the ryot's occupancy by intervals, however short, he will be able to protect his own interests most effectually.

Explanation 3 is for the most part an innovation. The present law does not permit the growth of a right of occupancy within a right of occupancy Sub-ryots should be mere tenants-at-will. The landlord has presumably exercised a power of selection with regard to his ryots, who have been permitted gradually to acquire occupancy rights. Why, then, should he have no voice in the selection of sub-ryots, if they are to be made capable of acquiring privileges beyond those of mere tenants-at-will? The proposed law is an invasion of the rights of landlords, and to some extent also of the rights of occupancy ryots as against their sub-ryots. I would therefore revise the whole of explanation 3 and *delete* from clause (*f*), explanation 4, the words "if such land is held for a term, or year by year," and I would add a clause to the latter explanation, viz., (*i*) "by a tenant with whom his landlord has entered into written engagements for a term or terms." I think it necessary to prevent litigation and confusion that parole evidence should not be sufficient to prove that tenancy was only for a term or terms as against a claimant to a right of occupancy.

12. From section 20, clause (*b*), I would expunge the words authorizing an occupancy ryot to transfer his interest by private sale or gift. On this point I cannot do better than quote the words of Sir Richard Garth. He observes (*vide* page 380, Volumn II of the Report)—"Act X of 1859 protected a ryot from eviction after twelve years of occupancy, and prevented the landlord from enhancing his rent after that period, except under certain conditions. Now, however wise and politic this provision might have been, it seems to me impossible to deny that it operated as an invasion of the landlord's rights as conferred upon him by the permanent settlement; and the only equitable ground upon which such an invasion could be justified would seem to be this,—that if a ryot had approved himself as a good tenant by cultivating his land and paying his rent satisfactorily for so long a period as twelve years, it was only fair to him, and no real injustice to the landlord, to continue him in his occupation, and prevent his being ejected, without some sufficient reason. But assuming this to be the true view of the matter, what becomes of the justification for invading the landlord's rights, if the ryot is to be allowed, as soon as he has acquired his right of occupancy, to get rid of it altogether? If the *equity* to the landlord consisted in his being permanently secured a good tenant, what becomes of the equity, if you allow the ryot to transfer his interest?" I am strongly of opinion that a transfer by private sale or gift should be made subject to the consent of the landlord, or that he should at least be allowed the right of pre-emption.

I would also quote from the report of Babu Gosain Das Dutt, the sub-divisional officer of Kissengunge (whose views coincide generally with mine on the leading questions already dealt with, and who describes the Bill as a "one-sided measure which refuses the zemindar even the advantage of a summary means of realizing his present rents"). He says—"Occupancy tenures being made transferable, the zemindar will be put to the greatest disadvantage possible. Refractory ryots will sell their tenures to influential persons who are enemies to the zeminflar, and thus put the zemindar to the greatest trouble, and they will induce other ryots to rise against the zemindar and to withhold the rents due."

The other clauses of section 20 are wholesome provisions.

13. Section 21 provides a fair limit in the case of rents payable in kind. But I would frame the enactment so as to set a limit to enhancement, and not to interfere with

existing rents. The custom in many parts is for the landlord to receive nine-sixteenths of the produce. The difference between one-half and nine-sixteenths is too small to warrant the Legislature in doing violence to an existing and well-recognized custom by setting up an arbitrary standard of its own.

I cannot agree with those who propound the doctrine that the limit of enhancement should not be determined by law, but should be left to private contract, or to be adjusted by the incidents of supply and demand. Such a view is negatived, not only by Regulation VIII of 1793, but by repeated subsequent legislation; and it should be one of the main features of a Rent Law to provide against rack-renting.

14 The fresh drafting of the grounds for enhancement, as contained in section 22, and the explanations appended thereto are calculated to work well. The reasons given in the Rent Law Commission's report in support of clauses (*a*) and (*b*) of section 23 appear sound and just. I think clause (*c*) should allow an occupancy ryot's rent to be enhanced to 30 per cent. of the annual value of the gross produce. As for a sub-ryot therein referred to, I have already given my reasons for refusing him occupancy rights. Clause (*d*) is a harmless provision, if the Courts would sparingly use it; but I fear its being largely resorted to contrary to sound principle. If the enhancement is just, why postpone its full operation to the detriment of the landlord who has been declared entitled to the whole? The injustice to the landlord would be the most conspicuous when the enhancement has been decreed on the second ground mentioned in section 22.

The reason for clause (*e*) is not apparent. The zemindar will have paid road cess and public works cess equally with the ryot. The advantages to the ryot of improved means of communication are by no means confined to his obtaining better markets for his produce. I think no one would be more surprised than the ryot himself at the concession which is hereby made to him.

15. Sections 24 and 25 call for no remark.

16. I would strike out the whole of Chapter IV. It confers a species of quasi-occupancy rights, which were never before contemplated. It will only create confusion and tend to unsettle rather than improve the relations between landlords and tenants. Section 28 would allow this new class of ryots a compensation which even an occupancy ryot cannot now claim, and the justness of the landlord's demand would not affect the claim in any way. By section 31 the ryot could claim a year's rent as compensation, even though the abatement he considered himself entitled to was only one cowrie. All this seems opposed to reason.

17. Chapter V, sections 32 to 37. These provisions seem open to objection only in two particulars. *First*, the notice to quit served through the civil Court should be made equivalent to an order of ejectment, which, however, the ryot might sue to set aside on the ground that he was not a mere tenant-at-will. It is not fair to compel the landlord to bring a suit against an obstinate ryot who was bound to quit on receiving notice. When the suit was ripe for decision, the ryot might remove to a distance and leave the unfortunate landlord to pay all the costs of the case. *Second*, the proviso in the second clause of section 35 imposes an uncalled for check on the landlord's plenary powers of getting rid of a troublesome tenant-at-will

18. Chapter VI, section 36, should stand. Sections 37 to 40 seem to lose sight of the fact that the ryot is a wrong doer if he applies the land to any purpose inconsistent with that for which it was let to him. I would apply the maxim of law that no person should be allowed to take advantage of his own wrong. Let the ryot obtain the express permission of his landlord before diverting the land to uses not previously sanctioned, and in default let him be liable to ejectment or compelled to restore the land to its original condition.

The extension of section 41 (*a*) to houses in large non-agricultural towns is objectionable; but the provision would in that case become practically inoperative if the general proviso I have already stated be added, viz that leases for a term or series of terms shall not confer a right of occupancy. Query. Why is the word "immediate" employed instead of "continuous," as in section 19?

I need not repeat the reasons for considering it inadvisable to make any occupancy holding transferable otherwise than by inheritance, or sale in execution of decree, for its own arrears, except with the express consent of the landlord.

Section 42. I would give 8 per cent. as a fairer limit than 5.

19. The provisions of Chapter VII, relating to merger, appear useful.

20. Chapter VIII, sections 46 to 54, contain most wholesome provisions for securing the registration of tenures, under-tenures, and holdings, and must ultimately tend to reduce or simplify litigation

21. Chapter IX, section 55, interferes with existing custom as to the number of instalments and due dates. It will, however, bring about uniformity, and I am not aware that either landlords or tenants are likely to raise any opposition. Section 56 is approved.

Sections 57 to 63, relating to receipts for rent, deposit of rent, and apportionment of rent, are useful provisions, embodying much that has been already settled, and I have nothing to say against them.

Distraint has been abolished, and with much reason; but section 64 regarding the hypothecation of rent is a very poor substitute for the landlord. It is said that

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he may bring the tenure, under-tenure, or holding to sale "either in a summary manner or in execution of a decree" for rent. If he is allowed to effect a sale summarily without the necessity of a suit, he will have little reason to complain; but such a power should be guarded by certain procedure, which I fail to find in the Draft Bill.

In view of the objections I have previously urged to allowing an occupancy holding to be freely transferable by sale, I foresee that by section 64 a tenant by allowing an arrear to accrue can force the sale of his holding, and collusively arrange for its purchase by a third party who would bid up to any extent.

With reference to Mr. Field's suggestion discussed in paragraph 133 of the Report, I think the tenure should be sold subject to its encumbrance, viz. the rent due to the landlord within a maximum of one year's rent.

22. Chapter X.—Of coparceners. These provisions will be resorted to when there is a dispute as to the respective interests of persons claiming to be coparceners. The law should provide what the manager is to do with the rent pending the decision of such conflicting claims. Clauses 1 (*a*) and 3 of section 66 should be struck out. I doubt if the Court of Wards would in any case assent to undertake the management, nor would it be advisable to afford contentious persons the advantages of the exceptional jurisdiction of the Court of Wards, including the realization of rents by certificate.

23. Chapter XI.—Sections 71 to 80, with the exception of clause (*b*), section 77. All these provisions are most admirable. They embody the existing law and practice, and engraft thereon some well-recognized principles of English law.

Section 80 will set at rest much disputing and litigation.

What I object to with regard to clause (*b*) of section 77 is that the right sought to be conferred upon ryots of cutting down trees is founded upon a misconception of the prevailing custom in Bengal. The Report says (paragraph 141)—"We have further provided, in accordance with what a majority of us believe to be customary in many parts of Bengal, that a ryot may cut down and appropriate trees on his holding planted by himself, or by any ryot from whom such holding was derived, by public or private sale, gift, device, or inheritance." Now I make bold to assert that the prevailing custom in the eastern and north-eastern districts is that the ryot has the usufruct of such trees; but he may not cut them down without the permission of his landlord obtainable by payment of a douceur. In the district of Purneah there exists the custom of "hath-rop" recognized by judicial authority, whereby the ryot is entitled to one-half and the landlord to one-half the value of such trees. This custom is certainly fair and reasonable, and should not be ruthlessly abrogated.

24. With regard to the provisions of Chapter XII, I consider that my experience of Behar is too brief and limited to permit of my giving an unreserved opinion. I would certainly deprecate the extension of this Chapter to the rest of Bengal.

25. Chapter XIII.—Sections 87 and 88 are good. *Delete* section 89, as the Indian Penal Code provides a sufficient and more efficacious remedy for extortion and wrongful confinement. Sections 90 and 91 should be so altered as to make it obligatory, and not optional for the Court to order the payment of compensation by recusant ryots who withhold their rents without reasonable or probable cause, or by plaintiffs bringing harassing suits for rent.

By this means much unwarrantable litigation would be put a stop to. At present it is believed that the power given to the Court is seldom exercised.

26. Chapter XIV—on limitation, seems to call for no comment.

27. I approve generally of the provisions contained in Chapter XV. I must say I do not perceive the force of the objection raised by Mr. Dampier (Volume I of the Report, page 95, paragraph 3) in these words—"But cases for determining the amount of rent payable by each ryot, whether in accordance with a table of rates so prepared or otherwise, I would have instituted in the first instance before the civil Court." Section 106 (*a*) distinctly provides that "the applicant may enforce such table of rates against such ryots by suit in the civil Court," and the Bill does not afford him any other remedy. As for suits involving the preparation of an enhanced jummabandi, or a settlement jummabandi, their very nature implies that they will not be brought against isolated ryots. Reading sections 99 and 100 together, it is not clear whether, in proceedings before a Collector, the applicant can do otherwise than apply for the preparation of a table of rates, or an enhanced jummabandi or a settlement jummabandi. If he may proceed by ordinary plaint (as in the Code of Civil Procedure) against isolated ryots, it should be so specifically stated. If it is the intention of the framers of the Bill, as I gather it is, to prevent the landlord from proceeding before the Collector against isolated ryots, I consider that this is a wise prohibition.

28. To section 113 I would add a clause empowering the Collector to fix the rates in accordance with those prevailing in adjacent lands, if he is unable to ascertain the existing rates.

29. I cannot too strogly commend the wisdom of the provision for compromise contained in section 116. Experience has shown me that rents long disputed by large communities of ryots may be speedily and amicably settled by a "hakim," who proceeds to the spot, patiently listens to the opposing claims, and then judiciously exercises the influence which his position gives him.

30. Section 118.—I think the period of ten years might safely and advantageously be reduced to five years. Section 124. It might be well to settle whether a Sub-Deputy Collector may excise the powers referred to.

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31. Section 127.—In providing for the cost of the proceedings before the Collector, makes no mention of any equivalent for the stamp duty which would have been payable if the suit had been instituted in the civil Court.

Section 128 (*b*) should be amended so as to allow the applicant to recover costs payable by a ryot by taking out execution through the Collector. There seems no good reason for removing the jurisdiction from the Collector, who has all the papers and facts before him, to the civil Court, where the landlord would be put to additional expense and trouble.

32. I agree with what Mr. Dampier says regarding section 130, and would leave the power of transfer in the hands of the Lieutenant-Governor, with, however, some proviso to limit the delay that might be occasioned by calling for further reports and making further references.

33. Chapter XVI.—Is substantially a reproduction of the Patni Regulation VIII of 1819. I would only remark that I wish some such efficacious measures could be devised for enabling landlords to recover arrears of rent from ordinary ryots by more summary and inexpensive methods than at present.

34. Chapter XVII.—Calls for no remark, except of general approval.

35. The provisions of Chapter XVIII are good so far as they go, but, as I have already indicated, adequate relief is not afforded to landlords for the recovery of arrears of rent.

It may be questioned whether the reference to 393 sections, or three-fifths of the total number of sections of the Code of Civil Procedure does not make the Bill unnecessarily prolix; and whether it would not be preferable to enumerate in one clause the 270 sections which are not to be extended to rent suits.

36. Appended to this report will be found some notes drawn up by Mr. Hopkins, who received copy of the Draft Bill and Report only five days previous to his departure on leave.

Notes by Mr. J. A. Hopkins *on the Draft Rent Bill.*

N. B.—The provisions of the Bill are not sufficiently general. In aiming at certain abuses it loses sight of others. There is too much of a tendency to interpret custom for the ryot only. Possibly the want of practical experience on the part of the most energetic members of the Committee is answerable for this.

In reading over the Rent Commission Report there are not many things which strike one as objectionable, but taken as a whole the Bill is objectionable in the extreme. At the outset the proposed abolition of distraint is a questionable measure. The privilege was not generally exercised, and if abuses were not uncommon, it was the only measure the zemindar could adopt to bring recusant ryots to account; and in the face of the special procedure for the realization of rents in estates under the management of the Court of Wards, or of the revenue authorities, the abolition is inconsistent. The question is whether zemindars are in a better position than Government officers.

2. Again, it seems to me that even supposing zemindars are not to be entitled to demand kabuliats from their ryots, ryots ought to be allowed to demand written leases. Evidence independent of oral evidence should be encouraged as far as is consistent with reason. If custom is to prevail, we shall be dependent, first, on oral evidence, second, on case law, that is, the different interpretations and applications of the customs of each district. This, so far from diminishing litigation will have a tendency to increase and provoke it in its most aggravating form. The little use made of the provisions of the existing law proves nothing, except the disinclination of the zemindar to grant leases. This is the more obvious when we remember that it has become almost a custom in many parts for zemindars to receive kabulyiats without granting a pottah.

3. Penalties for illegal cesses are unadvisable, for each illegal cess simply reduces the rent by so much. These cesses are vexatious, but the people pay them very willingly. In some parts of Purneah no less than 17 cesses are realized, their aggregate amounts to 14 annas in the rupee of rent.

4. I have not the time to give to the definitions which I should like, but I do not think that the ryot or cultivator should be recognized as a person competent to sublet his tenure or holding, or any portion of it. Subletting by a ryot, without the consent of the zemindar, whether the ryot has occupancy or not, should make him liable to ejectment. Zemindars should be allowed some power of selection.

5. On the subject of bastee-ood-bastee, I do not think that a person not a cultivator should require any protection beyond the terms of his lease.

6. The saving of custom and customary rights I suppose is necessary. New customs are constantly arising, but I think the zemindars should be allowed to benefit as much as the ryot; whereas, as far as I can gather from the Report, it would seem that customs exist only for the benefit of the ryot.

7. If ryots are allowed to sublet their holdings, the less said about a distinction between them and tenure-holders the better; for any distinction between the two is merely nominal.

8. The jotedars, howledars, and such like holders, do not exist in Purneah. Mokurrereedars, that is, holders from the time of the Permanent Settlement, are few. They are called by different names in different parts. Most of the occupancy ryots have held at same rate for

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more than twenty years. This is owing to the sparseness of the population, and vast extent of waste land, which has rendered enhancement inexpedient. In the north and north-east of the district, the gach system exists. It owes its origin to the five years' settlements of land made by the Provincial Councils of Dinajepore and Moorshedabad Under this system the pergunnah zemindar agreed for the revenue for five years, and he in his turn settled with mustajirs for five years. They on the other hand settled with gachdars considerable areas of land. The gachdar held for five years, and was supposed to cultivate his gach by means of hired labour or kolaits, who, as a matter of fact, agreed to pay him a portion of the produce. The custom still prevails. The question arises whether in the face of such a custom the gach or kolait can acquire the right of occupancy. I do not think so, unless the zemindar sleeps over his right, but a gachdar holding continuous renewals for more than 12 years does not appear to me to be entitled to be considered an occupancy ryot. Can, then, those holding under him become occupancy ryots? I think not, but it has been held they can.

9. How will the acquirement of occupancy right by three years' possession affect such tenures? I see no distinct provision of the law on the subject.

10. I do not agree in any way with the doctrines laid down in paragraphs 20,21, and 22 of the Report. The distinctions made are too artificial to be practicable.

11. The 20 years' presumption is a source of great embarrassment, but the zemindars themselves are to a great extent responsible for this. Purchasers of estates are greatly to be pitied. When taking possession they find the whole of the best lands of their estate held by tenants setting up a claim which it is impossible to rebut. Had the law relating to putwaris been maintained in force from the time of the Permanent Settlement, there would have been little difficulty about ascertaining how matters stood. There is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from this presumption.

12. With reference to paragraph 28 on occupancy rights, I think it should be distinctly laid down that no under-ryot can obtain occupancy rights, for such a right to accrue even under a ryot having the right of occupancy tends to cause deterioration in the value of the property. Can land held by occupancy ryots be sub-divided by transfer or succession? This point should be set at rest.

13. Paragraph 34. No ryot ejected for his own neglect should be compensated; no tenant, whether with the right of occupancy, or even mokurrari, ought to be held incapable of ejectment, if he wantonly neglects to pay the rents by which he holds.

14. I do not think it necessary to say much more. I have said enough to show how radically I differ in many points from the framers of the Bill. I note one thing, which seems to me particularly objectionable, viz. the recognition of the right of ryots to cut trees if planted by the ryot or the person whom he succeeds by transfer or otherwise. This right can be apparently exercised without the consent of the zemindar. It ignores all existing customs. Before going further with this, the Commission should enquire into the custom of "*hath-rop,*" and frame the law accordingly or we shall have the whole country denuded of trees. Suppose A. has a bigha of mango-trees for which he pays the zemindar Rs. 12. He sells those trees, say 40 in number, for Rs. 4 each; he secures Rs. 160 and relinquishes the land. What remedy will the zemindar have? A suit for damages. We are apt to forget that ryots never pay law costs if they can help it. They have a refuge in the ijmali family system. In fact, in legislating for India, we lose sight of too much of those conditions of the country, climate, and people, which tend to pervert the most harmless provisions of law to purposes of oppression, mischief, and chicanery.

15. Zemindars ought to have the means of compelling—

(1) Their tenants to attend at certain places on fixed dates to pay their rents.
(2) Their tenants to give notice of the transfer or sub-division of their tenures.
(3) Their tenants to use their lands for agricultural purposes on the pain of instant ejectment.

16. Ryots ought to have the power of compelling their zemindars—

(1) To grant them leases.
(2) To keep open all roads and water-courses.
(3) To have a convenient office for the receipt of payment of rents.
(4) To grant receipts.
(5) To set aside a certain portion of land for pasturage and fuel.
(6) To keep all wells clean and serviceable.
(7) To keep the untenanted bastee lands free of jungle.

No. 589, dated Maldah, the 23rd September 1880.

From—R. Porch, Esq., Officiating Collector of Maldah,
To—The Commissioner of the Bhagulpore Division.

With reference to your No. 1945R, dated 2nd August 1880, forwarding the Secretary to the Government of Bengal's, Revenue Department (Land Revenue) No. 2286½-1322½ LR., together with a copy of the report of the Rent Law Commission, Volumes I & II, for report

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on the changes in the land-law suggested by the Commission, I have the honor to inform you that statistics regarding size of the holdings and other particulars about land management in this district have been obtained from the Road Cess offices and from the Munsifs' Courts, and sent to the Manager of the Chanchal Estate for practical test as regards any typical holding with which the Manager is acquainted. The Manager's report will be separately sent.

2. I have the honor to submit the following remarks on the proposed changes, based upon the views of different classes of persons interested in land, whom I have been able to consult on the subject. I regret that shortness of time for dealing with the subject has caused the remarks to be few, and not well-supported by illustration. They are, however, based upon official experience and practical acquaintance with the subject

3. *Part I.*—Chapter I of the Bill—Tenure-holders and under-tenure-holders (sections 6-15).

Under the proposed Bill an occupancy holding is limited to 100 bighas; any larger area is a tenure or under-tenure as defined in section 11. The status of these two holdings had been fully described in paragraph 36 of the Commission's Report. This is a new provision which *alters the existing custom of recognising certain holdings of even less than* 100 *bighas each in area as a (jote) tenure. Unless zemindars are careful, many salamis or bonuses will be lost to them under the legal recognition of these more than* 100-*bigha holdings as tenures and under-tenures.*

4. *Para.* 4.—The limitations placed by the Bill on the enhancement of rent of tenures and under-tenures will guard the holder against excessive demands of his landlord, and are very favourable for the holder. Needful restrictions have been made regarding enhancement by giving the Courts the discretion of allowing enhancement by degrees (section 10*a*). It has also saved the ryots from constant increased demands of the landlord by providing that the rents when once enhanced shall not be liable to alteration for a period of ten years from that enhancement, a privilege now enjoyed by the ryots of Government khas mehals and ryots of estates of private landlords, otherwise there would have been a cause for discontent.

CHAPTERS II, III, AND IV.

5. Chapter II,—Ryots holding at fixed rates (sections 16-18, paragraph 5). This part of the Bill contains no new provisions.

Chapter III. (Sections 19 to 25) Ryots with occupancy right. This clearly provides for cases where a right of occupancy may and where may not be acquired. The elaborate procedure for enhancement set forth in Chapter XV applies to ryots having a right of occupancy.

Chapter IV. Ryots of three years' occupancy (sections 26-31). The rights of ryots under Chapter IV are a new creation. To these ryots also the provisions of enhancement set forth in Chapter XV should apply. It is very hard for a ryot who has held land for more than three years but less than 12 years and has spent much money and labour for its improvement, to be forced to quit his land simply on the ground of his inability to meet his landlord's excessive and often arbitrary demand. Take the case of a ryot who has held for 11 years and of a ryot who has held for 12 years. The first ryot holds 50 bighas of land at 4 annas per bigha and the second ryot has also the same. The second ryot will get the benefit of Chapter XV by having the rates determined by competent authorities, while the first ryot occupying only a year less than the second does, will have to quit his land if the landlord makes an unreasonable demand. *Chapter IV of the Bill should however, I am strongly of opinion, be omitted, and all* bonâ fide *resident ryots should have their rents fixed from time to time by the Collector's table of rates for that part of the district or pergunnah. Cultivators of chur lands would engage separately and would pay rent according to written agreement or local custom or else according to a special table of rates for such lands when prepared* by *the Collector and other revenue authorities.*

6. *Para.* 6.—There are very few mokurrari or istemrari jotes in this district. *There appears to be no reason why ryots holding land under a mokurraridar or istemrardar should be deprived of the occupancy right,* which he would have acquired by holding directly under a landlord, *such ryots, as a matter of fact, do now acquire occupancy rights.*

7. *Para.* 7.—The contemplation of a sub-occupancy right is very favourable for all such occupiers and cultivators, but as far as my experience goes, there is no such right recognised in this district, either on Government or on private estates. Sub-tenants holding under a ryot having a right of occupancy are treated as ordinary ryots. *This proposal appears to be an undesirable innovation,* and I am of opinion that sub-occupiers or karfa ryots ought *to remain tenants-at-will.*

8. *Para.* 8.—I am of opinion that *no interference with the accrual of a right of occupancy should be recognized,* and *that any contract made between a landlord and his tenant to the contrary should not be recognized by any Court.* Clause *h* of Explanation 4, section 19, *will be a dangerous instrument in the hands of zemindars for preventing the growth of occupancy right. Ryots depending for subsistence solely on agriculture would be forced to execute such contracts. This should be altered accordingly.*

9. *Para.* 9.—"*By making the right of occupancy not saleable in execution of any decree other than a decree for its own arrears,*" and "*prohibiting it from being mortgaged,*" *the Legislature seeks to secure a better position for the ryot,* but on the other hand has left a ryot, having no other property besides an occupancy holding, when in need of money, *no alternative but to dispose of the holding at any price it may then fetch,* or to

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go on making a living as he can with his holding, *because he cannot avail himself of borrowed capital on the security of his holding.* Bad seasons do not always occur, and if the ryot who has borrowed money from a mahajun cannot extricate himself from the debt, the Court giving decree for the same may exercise the discretion of allowing the rate of the interest claimed by the mahajun. Moreover the decree-holder might be restricted from bidding for the holding without the leave of the Court, in which case it will be the interest of the mahajun to secure the best price obtainable from the holding. As *the occupancy ryot is declared to be at liberty to alienate and devise his right without his landlord's consent, it is not clear on what principle of justice he can be debarred from mortgaging his right. This restriction would be likely to compel occupancy ryots to transfer their rights to their creditors on the slightest want of money.* The restriction laid down in section 20, clause (*a*), *is equally objectionable. As class protection, it is undesirable in the general public interest,* and *also as regards freedom of transfer of land like other property.*

10. *Para.* 10.—*Ejectment for breach of stipulation should be allowed in the case of an occupancy ryot. Equitable relief would be fair,* considering the ryots' traditional rights and connection with the soil, *if it could be obtained. Practically it would be unattainable. If Chapter IV is struck out as recommended, this provision will be more than ever necessary.*

11. *Para.* 11.—In my opinion, when the ryot does not get any assistance from his landlord in producing the crops, the landlord's *rent in kind should not exceed* 25 *per cent. of the gross produce, and no distinction should be made between staple and other crops in this respect. The rate of rent payable in kind as to staple crops by an occupancy ryot is much too high in section* 21.

12. *Para.* 12.—I have nothing to offer on this subject beyond approval. The existing enhancement rates have only been modified, and added to, in a way conducive to the welfare of the ryots.

13. Chapter VI. *Use of land for building purposes* (sections 36-42 para. 13).—This is a new provision. It affords a ryot, whether agricultural or non-agricultural, security for the money he may spend in erecting buildings on the land, while it gives ample opportunity to the landlord to prohibit his ryot from changing the use of the land as originally given. No hard-and-fast rule can, in my opinion, be laid down for determining the percentage on the value as fair rent for building land. *It will be determinable from time to time according to very local circumstances.*

The provisions of Chapter VI bearing on the use of land for building purposes are advantageous to the ryots. No provision has however been made *for the protection of ryots who have not acquired a right of occupancy from ejectment from bastoo or homestead lands.* It is an undeniable fact that poor ryots are often put to great hardship by being ejected from their homestead lands at the mere caprice of the landlords. The new law gives a right of occupancy to such tenants only after occupying for 12 years and it would be but reasonable that some compensation should be allowed to those who are turned out of their houses *before acquiring such rights, whether under a three years' or under a* 12 *years' rule. The three years' rule has been recommended by me.*

14. Chapter VII. Of Merger, (*Paragraph* 14, *sections* 43 *to* 45).—The provisions on merger are much wanted to remove difficulties and prevent uncertainty and litigation on this subject. The system of sub-infeudation has become so greatly extended that such provisions are required.

15. Chapter VIII.—Registration of transfers of Tenures, &c,—Paragraph 15, sections 46—54. The system of laying down definite rules for registration of transfers of tenures, under-tenures and occupancy holdings is good, and placing a limitation as regards time within which, and the expense at which, the registration is to be effected under certain penalty, has removed a great difficulty, which has all along been much felt by the landlord and his tenant. Inasmuch as the tenant, knowing that his landlord will demand an unreasonable sum for recording a transfer does not care to go and have the transfer recorded, and the landlord's office in consequence does not possess full information as to the present occupiers of land in the estate and the landlord's gomastah has to find out the person actually in possession in order to realize rent, and for other purposes. The new law has vested the zemindars with the power of attaching tenures and under-tenures upon the transferer's failure to have the transfers registered on the zemindar's sherista. This power is very likely to be a source of oppression to the tenure-holders. The remedy provided, *in case of the zemindar's refusal to register transfers of tenures,* by civil suits will entail costs and trouble, which tenure-holders would scarcely agree to undergo, and in most cases they would prefer to pay the exorbitant demands of the superior landlords. *It would therefore be of advantage to have such registration effected summarily by the revenue authorities.*

16. *Chapter IX. Of Rent and payments, and Deposits of Rents, &c.* (sections 55-64, para. 16).—No remarks are required except that some rules might with advantage be laid down *as to the manner in which deposits of rents due to several coparceners should be paid out separately.*

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17. *Chapter X. Of Coparceners*—(para. 17, sections 65-70).—The provisions of this Chapter are much wanted to secure the ryots when paying rent to a number of coparceners and when often required to meet their unreasonable demands. The objectionable practice of fractional payment of rent is an acknowledged hardship to the ryots, and has now been removed in case of any inconvenience arising to the public or injury to private rights occurring on the coparceners disagreeing as to the joint management of the estate owned by them jointly. This provision of *the law will be a boon to the ryots and at the same time will not be a cause of injury to the landlords.* The sections of Chapter X amount virtually to an enhancement of the rulings of the High Court from time to time on this subject.

18. Chapter XI.—*Miscellaneous.*—(*para.* 18, *sections* 71-80).—Ryots of the present day are occasionally seen of their own accord altering the use of the land as originally given by the landlords are occasionally put to loss in case of the land being relinquished afterwards. The provisions of section 77 will give benefit to the landlord in this respect. In like manner section 80 has prevented loss to the ryot in case of his being ejected by his landlord while the crops are standing on it. *Local custom should be recognized as far as possible regarding tenants' improvements* and *right to trees.* On reading clause 9 of section 79 with the provisions of the Sale Law, Act XI of 1859, the limitation of one year as to electing to avoid a lease or determine a tenancy by the purchase of an estate sold for arrears of revenue, appears to be a good provision.

19. Chapter XII for Behar (para. 19, sections 81 to 86).—The bhaoli system of cultivation prevails extensively in Behar and is *the principal cause* of the poverty of the Behar ryots as compared with those of Bengal. It is stated by those who have personal experience that land-owners in Behar do not agree to let lands on rent in specie and the poor ryots are compelled quite against their will to cultivate lands on condition of paying rent in kind. Then the system of danabandis is most oppressive to the ryots who are forced to pay illegal gratifications to the land-owner's amla who makes the danabandi in order to induce him to make a correct estimate. *It is therefore most expedient that more stringent rules applicable to all classes of ryots should be framed with the object of putting down the pernicious bhaoli system as far as practicable,* and of extensively *encouraging the system of settling for and paying rents in money.* The appraisement also should in no instance be made of the *standing crops,* but after threshing the *grain should be heaped* and *measured* and *divided between the landlords* and *tenants* according to a fair proportion as regards labour, other cost of production, and the cultivator's profits.

Chapter XIII—Of damages and Penalties (sections 87-91).—No remarks.

Chapter XIV—Of Limitation (sections 92-94).—No remarks.

20—(paragraph 20) Part II Chapter XV —Enhancement.—(sections 95-132) —The preparation of tables of rates *is a salutary provision,* and it may with advantage be left with the Collector and other revenue officers. *Such settlements of rates should be binding for* 20 *years from date of confirmation. Enhancement suits should,* I am of opinion, *be decided by the civil Courts only.*

Chapter XVI—Recovery of Arrears by summary sale (sections 133-146).—No remarks

Chapter XVII.—Special rules of procedure.—(Sections 147-164). No remarks.

21. Chapter XVIII.—Procedure in suits for arrears, &c.—(Paragraph 21) (sections 165-225).—Some of the proceedings in execution seem to have been made needlessly complicated and will prove dilatory. The procedure suggested by the Commission with regard to the trial of suits may be allowed to stand as it is.

22. (*Para.* 22).—The period of limitation applicable to suits for abatement of rent ought to be raised *from one to three years,* inasmuch as tenants ought to have the option of suing for abatement, or of setting up the fact of a diminution in answer to a claim for arrears of rent, which it would be impossible for the tenants to do were not the same period of limitation to govern cases for arrears of rent, as well as suits for abatement.

23. *General remarks* (*a*).—It is hoped that the Legislature will have thus protected the actual cultivators and at the same time not unduly encouraged the growth of middlemen rentiers. It appears to be a less evil in this country to have a large body of fairly treated tenants-at-will, and a comparatively small class of liberal, wealthy landholders, than to create a very large number of middlemen idlers to come between, pressing upon the actual cultivators and asserting proprietory rights on a petty scale, which will interfere with landlords and public officers and Government in dealing with improvements. A law has long been wanted for the protection of road-side and other public lands. Encroachments and necessary improvements will be more difficult to deal with than ever.

(*b*). *The provisions of distraint should be retained in the Rent Bill* to be *applicable everywhere to non-resident* or *paikast ryots' holdings,* and *to any parts of the country* the *Government might choose* to *generally extend them to,* at any time, or to retain them in, as regards all ryots' holdings.

(*c*). *Contingencies arising from alluvion and diluvion* and *other causes involving loss of a ryot's house* and *lands in the village* should not be left unnoticed. The custom on this subject should be recognized by reference in the new law, viz. by proviso or by example. *In a reformed village* a right of occupancy-tenant of *the same diluviated village* might *claim to be put in possession of a similar holding in the reformed mouzah. When a ryot's bastoo*

land is cut away, or otherwise * *lost homestead land should be given* to such ryot *from the best land available for the same left in the village.* These matters have come up for disposal in this district lately in khas mehal and wards' land management.

* Viz. taken for a public purpose, &c.

No. 1641J, dated Dumka, the 17th September 1880.

From—W. B. Oldham, Esq., c s. Deputy Commissioner, Sonthal Pergunnahs,

To—The Commissioner of the Sonthal Pergunnahs.

In reply to your No. 1945R, of the 2nd ultimo, I have the honor to forward some notes strung together after a perusal of the Draft Rent Law and the Report and proceedings of the Commission. The notes deal only with points in which actual experience has given a basis for criticism.

Notes on the Draft Rent Bill for Bengal.

I.

The draft is exceedingly complex and difficult, quite apart from its reference to other laws. So much so that the gain of simplicity by the sacrifice of anything not essential in substantive law or procedure far outweighs the apparent precision, or even apparent justice sacrificed. It is found in practice that very elaborate executive directions are not fulfilled, though an approximation to fulfillment is attained, which is accepted and satisfies the object. When rougher outlines are provided, they are completely filled. In law the omissions become serious.

II.

The Sonthal Pergunnahs give an excellent ground for applying practical criticism to every part of the draft. The district contains every kind of tenure, and every system provided for; that is, it is formed of part of Behar where a system of racked-rent was carried to the utmost degree bearable, and where the practice of rent payment in kind was in force; of Western Bengal exhibiting the nearest approach to the village community system known; and where also lands recently cleared and settled and the tenures thereby formed or claimed are found; of Central Bengal where individual rights are strong among the cultivators, and in the Rajmehal sub-division of Eastern Bengal where examples of the large "jot" system are to be found. One-quarter of it is a Government estate exhibiting a model treatment of cultivators directly under the Government landlord, and without any intervening infeudation; and, besides, it has had within the last eight years a special rent measure provided for it, which in its effects, if not in its design, has been almost revolutionary, and part of which resembles some of the new provisions of the draft. Moreover its rent law is administered by the Collector of the district and his subordinates, and under a special procedure similar to that proposed in the draft.

III.

The first obvious relation existing in the district, as elsewhere in the country, was that between Rajah and Prajah—terms used alike in the Hindi and Bengali portion of the district—and which are scarcely interpreted by landlord and tenant. The bond was strong for good or evil, and the recent settlement has, temporarily at least, destroyed that bond, for evil certainly and as certainly for good. That the draft, if made law, would have a similar effect, though not in the same degree, there can be no doubt, and the last effect is one to be deplored, and to be obviated if possible.

I.

With the above three considerations in view, I proceed to criticize the draft.

1. Section 4. The limitation of the effect of custom and the illustration are excellent. The rights, claimed in this district, as based on custom are often monstrously absurd.

2. Section. 9. Section. 11. I think the 80 per cent. limit far too high, and undesirable as too high under my third general consideration.

3. The tenures of this district, which would be affected were the draft made law here, are almost the same as the ayma and mandal tenures described in paragraphs 16 and 17 of the Report. The settlement has already made them tenures, so that it can be said from experience that the provisions of section 11 are altogether excellent, because we can see by concrete example what would have become of the "*khuntkatti*" (stump-cutting) claim here, but for the settlement rule, that is, the representative of the patriarchal settler who with his people had formed and cleared the village, or even he himself was liable at any time to be driven from it or reduced to a labourer in it, and this happened in numberless instances before settlement gave the needed protection. Section 11 will do for elsewhere

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what the settlement rule has done for this district. I can thus divide the persons whom section 11 will affect into two classes—

(1) Those described above who in this district by a special rule, and elsewhere by a precarious acknowledgment of custom already are considered tenure-holders, or who ought for the same reasons to have the acknowledgment.

(2) Those on whom the necessary arbitrariness of the rule will confer a pure piece of good luck, and give to them much more than they ever had or dreamt of before. I have selected here, near Dumka, six examples of this class, and it will be very numerous in the east of the district.

4. *Class No.* 1.—The Midnapur representatives get 5 per cent. In the Damin-i-Koh they get 8 per cent. contingent on punctual payment, and some further privileges worth about 2 per cent. more in the aggregate. In the zemindaries they are entitled to 12½ per cent. for punctual payments, and to some privileges. The absolute value of the whole is about 10 per cent. because of the contingent nature of the payment.

5. So that the draft proposes to confer possibly double or treble the rule found by experience sufficient for the class for whom it is, I presume, specially meant, and the same for those who will get the benefit of it by the necessary accident of its terms.

6. I would fix the limit at 20 per cent., a much easier rate too to calculate. I leave out the hypothetical consideration of the wider profit encouraging sub-infeudation, and confine myself to what has been experienced.

Section 10.

7. In the same view, and under consideration No 1, I would erase the provision for progressive increase which is really no slight complication when a dispute arises.

Section 10 (b).

8. Limit of period for fresh enhancement to ten years, found by experience to be excellent.

Section 12.

9. Under consideration, I would erase this, and let section 9 govern all cases. It seems to leave ample room for equitable consideration of conditions.

Section 19, Explan. 3 (a).

10. In this district the tenants of *mokurraridars* and *istemrardars* get right of occupancy, and I can imagine no cause why they should not.

Section 19, Explan. 3 (c).

11. And so do the sub-tenants of occupancy ryots. It has been declared repeatedly that this is not so on the abstract postulate that there cannot be two rights of occupancy in the same land; but in practice the maxim cannot be postulated, and cases contradicting it exist. The effect generally is to make the superior tenant's holding valueless or nearly so, and to gradually eliminate him, substituting the actual cultivator. The draft would keep alive the two rights. It would certainly be much simpler to treat occupancy tenants, as tenants-at-will. It is only a special process, like the Sonthal settlement, which could substitute them for the occupancy tenant who had made himself a middleman. So under consideration, I would erase (*c*) of Explanation 3 of section 19.

12. (*b*) *Of Explanation* 4, *section* 19.—We have had instances here showing that a ryot should not be allowed to contract himself out of possible rights, and that he does not understand what he is doing when he so contracts. The clause (*b*) should be erased.

13. *Section* 20.—*Transferability of an occupancy tenure*—In this district the tenants of "jote" of two or three years standing as well as of occupancy holdings sell them privately or mortgage them or devise them as they will; and they are sold in execution for any kind of decree. The landlords are disgusted by the settlement, and are apathetic.

14. Numberless instances show that this unrestricted transferability is bad; perhaps the mortgaging worst of all.

15. The Sonthal Civil Code, however, provides that the zemindar must be consulted before such a holding (jote) is sold in execution of decree. The provision gives him the power of objecting to an undesirable tenant.

16. It has recently been held that a purchaser cannot be let into tenancy against the consent of the landlord.

17. I am averse to the unrestricted transferability of occupancy holdings, and so are the officers of this district. The general consideration applying is No. 3. Nothing would make the body of tenants so independent of the capitalist and landlord, and nothing would so much deprive him of interest in them. I would not allow a new tenant to be let in against the consent of the landlord, when the dissent is positively expressed. I do not believe that this restriction would much affect the value of the holding to the holder. The restriction might be so provided that a resident landlord would get the benefit of it, and an absentee no benefit. This is the effect of it as provided in the Sonthal Civil Rules. With this restriction the other incidents of the occupancy holding as drafted are unobjectionable.

18. *Section* 20, *clause* (*e*).—This is based on the supposition that a ryot is in a much more independent position than he actually is; that he has reached in fact the position which parts of the draft would give him. It is absurd to suppose that at present he is in a proper position to contract. The proviso to the clause should be erased under consideration I.

CHAPTER IV.

19. The whole of this Chapter should be erased under all my three considerations. The result of the settlement here has shown that in all the parts, and under all the varying conditions of the district, there is no marked distinction between occupancy ryots and resident ryots who had not acquired the right. The settlement has rolled them all up together, and to all given its special benefits, merely leaving a non-occupancy ryot to be ejected for good reason shown at the Court's discretion, but not otherwise than by a Court, and the effect is excellent, and is all that is wanted.

20. *Chur* lands have been exempted from the settlement here. Specific contract in every case is found to be the best way of dealing with tenants on them.

CHAPTER VI.

21. Some law on this point certainly is badly wanted. We have had full experience here of the chaotic state of the case laid on the subject, and the last rule adopted has been to allow ejectment when the building tenant has no lease subject to compensation. From the cases I have had, I think the period of two years provided in section 40 for service of notice is too short. Any one who has had experience of land management knows how gradual the changes contemplated sometimes are, and how the utmost vigilance fails to detect them; while the power of a capitalist landlord, say in a growing bazar, is important. Dumka is a good instance, and has afforded many cases.

22. *Section* 42. Five per cent. per annum is the rate generally used for estimates in such cases throughout Bengal, and, though too low for some districts is the best rate for a law for the province. I do not think the rate could possibly be settled with any fairness by the Collector's rate-table. Take a rural village growing into a bazar. The market-value of one plot may be twice or thrice or ten-fold that of another not 100 yards distant, *e g*. Dumka.

23. *Section* 56.—The complication caused by the final proviso might be omitted without harm.

24. *Section* 77 (*b*).—The provision is revolutionary. Not even in this district where timber and wood privileges are more largely claimed and used than anywhere that I know of is such a right as this thought of. I think the clause goes far beyond the object of the Bill, and is bad. And I think much the same of that preceding it, the last clause of section 77 (*a*). It is only an old tenant in this district, or a clearing tenant in the jungle parts to whom such powers are allowed.

25. *Section* 80 is equally revolutionary. I would characterize it in the same terms as the above.

26. *Section* 86.—Rent in kind has been commuted for money between landlords and cultivators throughout the Behar portion of this district by the settlement. This was done quite arbitrarily, and sometimes the tenants objected, sometimes the landlords. I think it was too sweeping. The settlement tenants who have got the benefit of the measure, when sub-letting themselves, invariably do so in "jhaoli"—a system which adjusts itself for ever, and saves all theories and practice of enhancement.

CHAPTER XV.

27. The Sonthal settlement, which consisted mainly of the framing of *jummabandis* in a much more rough and ready fashion than is here contemplated, ought to give some indication of what these provisions would entail.

28. After reading them through I find nothing which I would recommend to be absolutely omitted. They can only be judged after they have been applied to a part of a district.

29. I think, however, that the process of framing a Collector's rate-table might be simplified and made rougher. But I have not time to go into details, and as my remarks hitherto have been derived from actual experience, refrain from hypothetical criticism.

CHAPTER XVIII.

30 This is certainly an awkward Chapter with its references to other laws. In this district we have a Code specially provided for these cases, but it is found by experience that it does not further any system of summary trial, that it entails just as full a record as the ordinary law, and that speedy justice is no justice. Our rules in fact enjoin almost every thing which the Chapter enjoins, and differ in brevity only because they are a condensation, and far from precise in their language, which is not what could be used in a Statute like the draft.

No. 695G, dated Bhagulpore, the 10th September 1880.

From—H. J. NEWBERY, ESQ., Collector of Bhagulpore,
To—The Commissioner of the Bhagulpore Division.

WITH reference to your No. 1945R, of the 2nd August, I have the honor to submit the following report on the proposed new rent Rent Law.

1st. It is with the utmost diffidence that I offer any opinion upon any of the moot points as I am fully conscious of my want of experience in the subject generally.

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Whilst Act X cases were tried by the revenue Courts, I was serving in two Behar districts only, viz. Gya and Shahabad, and in these the ryots seemed to me to want all the protection which could be given them by law.

From the time that Act X cases were transferred to the civil Court, until I became a Collector, I had no knowledge of how matters were going on between zemindars and ryots, except such casual glimpses as I gained in the course of trying criminal cases.

Since I have been a Collector my entire experience of such matters has been gained whilst acting as district representative of Government in the management of Court of Wards' Estates and khas mehals, and I cannot but feel that this recent and present experience enlist my sympathies strongly on the side of the landlords, and makes me look upon every fresh privilege granted to ryots as a fresh difficulty in the way of landlords getting in their fair and reasonable rents fully and punctually.

Chapter I.

As no such holdings existed under the Court of Wards or Government khas mehals, I was absolutely blank on the subject of turning ryots with a right of occupancy over 100 bighas and upwards into tenure-holders. I therefore wrote a circular letter to the six principal zemindars in the district.

Some of their replies have not been received at all, and those that have been received have come so late that I have been unable to collate them for your perusal before starting on leave.

I append them therefore to this report, and they must stand in the place of any suggestions which I ought to have made on the subject.

Vide Appendix A, B, C, and D.

Chapters III and IV.

In dealing with the rights of ryots the majority of the Commission appear to me to have started on a fallacy.

If this were 1780 instead of 1880, and we were about to confer on zemindars for the first time the enormous privilege of a permanent settlement, we should be perfectly justified in imposing what conditions we pleased as to the rights of ryots. But at the time of the permanent settlement the right of Government to interfere between the zemindar nad ryot in the matter of rent was reserved by only a few vaguely worded sentences in the old regulations.

These sentences fully bear the construction put on them by the Commission, or even a much wider construction:—But is that a fair criterion? I think not. I think we must not look to this, but must see what construction subsequent legislative rulings and custom have placed upon those sentences.

As I understand the matter, it appears that ryots are divided into three classes—

1st.—Tenants at will, who must come to terms with their landlords without the aid of the Courts.

2nd.—Ryots with the right of occupancy whose rents cannot be enhanced or their possession interfered with except by an elaborate procedure in the civil Court; and

3rd.—Ryots who have held at fixed rates from the time of the permanent settlement, whose rents cannot be enhanced at all.

Now the new law proposes to introduce a fourth class of ryot between classes one and two.

It is an innovation with nothing to recommend it, and likely to raise the greatest possible opposition and (if passed) of litigation.

The idea of compensation for improvements, &c., is also a novel one and utterly unsuited to India. The only country in which it has been tried is Ireland, and there it has been a source of litigation and trouble. The result of the experiment in Ireland is certainly a strong reason for believing that the same measure, if tried in India, would be most disastrous to the good feeling between landlord and tenant.

On the subject of sub-letting and permiting the sub-ryot to acquire a sub-right of occupancy the Commission appear to me to have landed in a contradiction.

The whole object of granting a right of occupancy at all is to induce actual cultivators to settle permanently on and cultivate their lands peaceably, and to put it in their power by so doing to better themselves in the social scale.

Now the moment a ryot sub-lets, the reason for its existence ceases. He puts in a miserable unsubstantial sub-tenant from whom he exacts the highest rent possible and who must be ever living a wretched hand-to-mouth life on the brink of starvation, whilst the original ryot becomes a pernicious middleman, living in idleness on the difference between what he pays to the zemindar and what he receives from the actual cultivator. Thus this abuse of the right of occupancy frustrates the sole object of creating it and leaves the actual cultivator in much worse case than a tenant at will under a zemindar.

The only logicial way out of the difficulty appears to me to be this—

If a ryot by twelve years' actual cultivation acquires a valuable right of occupancy, then by a parity of reasoning by a twelve years' cessation from actual cultivation he forfeits the said right.

Let an occupancy ryot sub-let as it has been the custom of the country for many years, but if his sub-tenant holds on twelve years' so as to acquire a right of occupancy, let the original ryot's right lapse and let the sub-tenant take his place with the zemindar. This, without riding rough-shod over an old established custom of sub-infeudation, would put a reasonable limit to it.

As to the machinery for introducing pergunnah rates, I think it might be very considerably simplified. I would strongly deprecate the introduction of concurrent jurisdiction of the revenue and civil Courts or of allowing a plaintiff any choice whatever as to the tribunal before which his case should be tried.

Where a zemindar has a difference with one ryot out of a whole village as to the rate of rent, the civil Court is the best place for him to have his case tried, but (to prevent his bringing sample cases) he should be barred from suing any ryot of that same village on the subject of rate of rent for ten years.

If the difference is between a zemindar and more than one of the ryots of one village the revenue Court is the best place to settle the matter. The zemindar should be bound to make his application to the Collector for the settlement of his rates of rent, giving a complete list of the ryots with whom he wishes for settlement, and no complaint against any ryot *not* contained in that list should be listened to by either civil or revenue Court for ten years.

In the same way all the ryots of one village should apply to the Collector for settlement of their rates with their zemindar, and any ryot not joining in the application should have no Court open to him for ten years.

Chapter VI.

I think any legislation about building lands quite unnecessary in this district. Villages here are compact and any resident ryot can always get a corner of land within the limits of the village, whereon he can erect his mud or mat hovel.

I believe that allowing him to build where he pleased, trusting to the zemindar not taking any notice of his action for a certain number of years, would be likely to encourage the ryot to leave the village and set up his isolated hut in the midst of his cultivation, and then we should have repeated here the loathsome sight common in Eastern Bengal, each house at a distance from its neighbour, and backed with a filthy stagnant tank and surrounded by a fever-breeding bamboo hedge.

In this district there are village lands acknowledged as such from time immemorial and a ryot can always find a place. A salami of a rupee or two is generally taken by the patwaree when a new house is erected (I doubt if it ever reaches the zemindar), but no rent is ever asked.

If the ryots were in the habit of building palatial pucca residences, such legislation would be necessary, but legislation for a mat hut which the cultivator and his family can carry away on their heads is rather like, " breaking the butterfly on the wheel. "

Chapter VII.

Merger is an intricate technical doctrine about which it would ill become me to offer an opinion.

The only two practical illustrations I have ever met with are—

1st.—Where a zemindar, who cultivates a certain portion of his own land under the name of kamat, is sold up and then tries to hold on to the said land as an occupancy ryot. This is manifestly unjust to the purchaser. Kamat lands are by far the most valuable lands in a zemindari, and if a purchaser finds these in possession of a ryot with the right of occupancy nine-tenths of their value are lost to him.

2nd.—A farmer on a 20 years' lease of a whole village personally cultivates a certain acreage: at the expiry of his lease, when the zemindar regains khas possession, the farmer often tries to hold on to his cultivation as a ryot with occupancy rights. As long as it is clearly provided in the law that no zemindar or farmer of any village or any share in a village can acquire any rights as a ryot, further legislation would be unnecessary for this part of the country.

Chapter VIII.

The provisions in the draft Bill for the registration of tenures and occupancy holdings are all that can be desired in theory, but I doubt them being practical.

In large estates such registers would easily be kept up, and it is in the large estates where there would be the least difficulty of carrying out the law. But in small estates owned by a large number of share-holders (which include the greater portion of the province) each petty zemindar would keep up his little register on a separate strip of paper which could be altered and forged at will, and which would most certainly be not received as evidence in any Court on either side of a question between the zemindar and ryot.

Chapter IX.

I have very little to say on this chapter. As long as ryots are really bound to prove that they have tendered the rent to the zemindar before depositing it, the weak point in the present law will be avoided.

Chapter X.

The compelling coparceners to appoint a manager so that ryots may not be harassed by fractional demands is good.

But I would limit the right of applying to the Judge to the aggrieved ryots only. The Court of Wards is an agency wholly unfitted to take charge of such estates. The machinery is cumbersome because it is thorough going, and in the majority of cases the result would be that after the Court of Wards had taken a considerable amount of trouble the coparceners would come to terms and appoint a manager of their own.

Chapter XI.

I confess to being a perfect sceptic as to the existence of "tenants improvements" either in this country or in Ireland. I have never seen any in any district in which I have been, and therefore any legislation for compensation for that which is non-existent appears to me superfluous.

On the subject of trees the draft Bill would rudely uproot an immemorial custom in this part of the country.

Before a ryot may plant trees at all, he is bound to get a mokurary pottah for his land. He has then to divide the fruit and timber with the zemindar half and half.

It appears to me that in the same way as when a Government promissory note is sold the interest due up to date is sold with it, so should the standing crop pass with change of ownership in the soil.

The ryot who has sowed the crop will get a better price for the holding with a standing crop on it than he would if it were fallow. This also would avoid a very serious practical difficulty, which often lands honest purchasers in the criminal Court.

A man has bought a holding and goes down to take possession of it and he finds that the former owner has been there a few days before and sown some very slowly growing crop which is just sprouting above the land. The old owner claims to hold on to the land till that crop ripens, meanwhile the purchaser is vexatiously kept out of possession of this purchase. If he takes half a dozen ploughs to the place and ploughs up the old owner's sowings, it is highly probable that the old owner will come and have a riot with him, and the purchaser will find himself declared the aggressor under the criminal law.

In my opinion therefore it would be much better for the standing crop in all cases to pass to the purchaser. The former owner will be benefited by the higher price he will get for the holding.

Under this chapter I would urge that Collectors, after due enquiry, be authorized to declare the lugga for each sub-division or thana or pergunnah.

The confusion caused by the use of luggas of various lengths is extreme. When a zemindar and ryot are bargaining as to the rate of rent per bigha, the difference of the bighas current in the neighbourhood introduces a fresh difficulty. There are places in the north of this district where the lugga varies every few miles, and even where there exists two or more different luggas within the same estate.

The present would be an excellent opportunity of establishing standard luggas for each geographical division of the country.

Chapter XII.

Bhagulpore district, though called Behar, is too near the border to be thoroughly Behar in its institutions. I do not think any of the special provisions of Behar are wanted here.

Chapters XV and XVIII.

It would be presumptuous in me to offer any opinion on these two chapters. They are essentially legal, and being drafted by such an eminent lawyer as Mr. Field, I should accept them without note or comment.

Time only will show how they will work.

N. T. W.—Reg. No. 6791J—118—6-12-80.

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No. 763M, dated Dacca, the 27th December 1880.

From—F. H. PELLEW, Esq., Offg. Commissioner of the Dacca Division,

To—The Secretary to the Board of Revenue, L. P.

WITH reference to your memorandum No. 659A, dated 30th July last, I have the honour to submit the following report on the "Bill to consolidate and amend the law of Landlord and Tenant."

II. The Collector of Dacca reports as follows—

"2. *Preliminary Chapter.* I think exception must be taken to some of the definitions herein contained. Can no person who is not in actual "possession" be a "proprietor?" The same objection occurs to the definitions of "tenure-holder" and "under-tenure-holder."

"3. *Part I, Chapter I.*

"*Section* 9. The limitation to 30 per cent. seems to me unnecessary, as well as the proviso in the following section for gradual enhancement. In most districts of Bengal, however, the fact that a customary rate exists will prevent the operation of the former condition. The proviso, too, that the rent of a tenure or under-tenure-holder once enhanced may not be altered for ten years does not seem to me to be demanded.

"4. Innovations in the law and the creation of principles foreign to the customs of the country are, I maintain, strongly to be deprecated unless their urgent necessity can be demonstrated. It is this conviction which has prompted the observations in my last paragraph. Sections 11 and 12 of the draft Bill are violently opposed to the principle just enunciated. The section (11) begins by anticipating a conflict with the custom of the country, but neither custom nor contract to the contrary is to be allowed to interfere with its provisions. A ryot is converted into a tenure-holder or under-tenure-holder by the accident that he holds more than 100 bighas. If he only holds 100 bighas, he still remains a ryot within the operation of this section. And the operation of this section will be retrospective, a fact which appears to me to interfere in a most unwarrantable manner with the rights of the landlord as they exist at present. When these tenures have been held for 12 years or more they become permanent and transferable, carrying with them all the privileges detailed in section 13.

"5. *Chapter II* treats of ryots entitled to hold land at fixed rates, and does not alter or add to the present law much. *Chapter III* treats of ryots who have held land for 12 years, and acquired a right of occupancy, and section 19 extends the right of occupancy to persons holding under mukururidars or estimraridars. I see no objection to this extension, if extension it can be strictly called. The mukururidar can be looked upon as either a tenure-holder or a ryot. Both under a tenure-holder or a ryot with right of occupancy the subordinate holder acquires a right of occupancy. The subordinate holder should not be precluded from this privilege, because the person under whom he holds is a mukururidar or estimararidar.

"*Section* 20 is a very important section, and explains the legal incidents of a right of occupancy. The transferability of his right of occupancy at the will of the ryot is a new right with which the new law is to invest him. I do not think sufficient reasons have been shown for this innovation. The improvement in the status of the ryot is to be made at the expense of the landlord. But is the ryot yet fit for the privileges with which it is proposed to invest him, and will the grievances inflicted on the landlord be compensated for by the advantages that will accrue to the ryot. Unless these questions can be answered decisively in the affirmative, I would refrain from the innovation proposed. With the progress of education among ryots, with the appearance of signs showing that baneful customs now prevalent among them are beginning to lose their force, and that thrift is a virtue not foreign to their nature, the legislature can intervene and aid them in the acquisition of a higher status which their growth in civilization has made a right, but the present proposed interference of the legislature appears to me premature. And that it distrusts the capability of the ryot to exercise complete rights of transferability is shown by its proviso that the ryot may not mortgage his right of occupancy. He may sell, but he may not mortgage. Their reasons for this distinction are clearly explained by the Commissioners. I am of opinion, however, that if he is allowed to sell he should be allowed to mortgage. A ryot finds himself in temporary difficulties, a mortgage would get him out of them, and he would in time recover his holding. But the law will not allow him to mortgage He must sell. The ryot will in time forget the large increase in his privileges that the power to sell his holding with its right of occupancy has conferred upon him, and he will think it a great grievance that when he wants some extra money he will have to sell it outright and is debarred from mortgaging it. I would leave the law where it is, but if the ryot is to be allowed to sell, I would let him mortgage also.

"6. If the ryot's holding in which he has a right of occupancy can be sold for its arrears, the landlords will not have to resort to the old procedure of eviction. To the landlord however will remain a right to evict under certain circumstances, and this proviso seems to me inconsistent with the spirit of the Act. If the ryot commits a breach of a stipulation he

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has made, should his contract that he may be evicted for the same be allowed to have force? Would it not be sufficient to secure to the landlord adequate compensation for any damage the breach has occasioned him?

"7. *Sections* 22 and 23 relate to the enhancement of rent payable by ryots with a right of occupancy. The grounds of enhancement will remain much as they were, though they are stated with more clearness than they are under the present law. When the ground of enhancement is that the productive powers of the land have increased otherwise than by the agency of the ryot, or that the prices of the produce in the locality have increased otherwise than by the agency of the ryots. I have stated these two grounds in an undetailed form—the explanations introduced in section 3 (*a* and *b*) are I think to be approved. The conditions laid down in paragraph *c* of the section will be more difficult to work; but, I am in favour of such limits to enhancement (in the case of ryots), and I am unable to propose other proportions which would be less liable to adverse criticism. That the enhancement of the rent of an occupancy holding should, where immediate enhancement to the full would be oppressive, be gradual, is an unobjectionable provision.

"8. We come now to *Chapter IV*, which treats of ryots who have held land for three or more, but less than twelve years. I see no sufficient reason for the innovations proposed in this chapter which would create a class of ryots never before in existence. They are innovations which will provoke the hostility of the landlord in a very high degree, and they will tend in the most direct manner to harden his relations with his non-occupancy ryots. At present, as long as they pay their rent they are not in much danger of having their tenancy interfered with unless the landlord is anxious to prevent their acquiring a right of occupancy; but now he will be unwilling that they should be left in undisturbed possession for three years, and thus acquire at his expense privileges which he is unwilling to grant them and he will regulate his procedure accordingly.

"9. *Chapter VI* treats of the use of land for building purposes. I would exclude it from operating in case of the three-year ryots, but otherwise I approve of its provisions.

"10. *Chapter VII* treats of merger, on which I have no particular remarks to offer, and *Chapter VIII* of the registration of transfers which little more than re-states the existing law on the subject.

"11. *Chapter IX* treats of rent and sundry matters connected therewith, and re-states the existing law with various additions and alterations. Deposits of rent are to be received at the collectorate and sub-divisional treasuries instead of by the Civil Courts. I approve of a procedure which will bring the relations of landlords and ryots more within the ken of the district authorities than they are at present. To the case under which the existing law allows the deposit of rent by the tenant, the new law will make two additions, both of which will be advantageous. These arrangements will probably, on four occasions in the year, occasion a press of work at the district and sub-divisional treasuries, but the difficulties that will arise can be easily surmounted.

"12. The only objection that I see to the sections (62 and 63) on the apportionment of rent is that they do not guard against the attempts that will be made under the guise of applications for apportionment, to procure adjudications on questions of contested title.

"13. *Chapter X* relates to coparceners, and re-states the law with some additions on the subject at present existing, and which is chiefly to be found in Regulation V of 1812. The provisions of this chapter are unobjectionable.

"14. *Chapter XI* is concerned with some miscellaneous rights of landlords and tenants. The subjects treated of are of various degrees of importance One provision that will in some quarters excite much opposition, is that contained in section (*b*) of paragraph 77, to the effect that a ryot is entitled to cut down trees planted by himself or his predecessor in title, any custom to the contrary notwithstanding. I am opposed to this innovation, as I see no necessity for it. If custom does not concede such a right to the ryot, he will not specially desire to have it, while the landlord will regard this invasion of his present rights as a great grievance.

"15. We come now to the *Chapter on Procedure* (*XV*), a landlord (section 95) who has a permanent transferable interest in land held by a ryot having a right of occupancy where the grounds of enchancement are the first three mentioned in section 22, may, at his option, proceed in the Civil Court or before the Collector; where the ground is the fourth, he will proceed before the Collector, and the same procedure may be adopted by farmers and leaseholders under certain circumstances. I think that this alternative procedure may occasion much confusion, and that inconsistent and disturbing results may be arrived at in the same district according as the case is brought before a Civil or a Revenue Court, and I should be most averse to such work devolving upon the Revenue Courts unless I were quite assured they would be adequately strengthened. By adequately I mean that such additions would be made to the staff as would be able to cope with the whole of the new work. District officers at present have to do more than they can do thoroughly. Much of their work is hurried and incomplete, and if rent-suits are to be added to it, the new work will probably be done in many cases badly and the old work worse than it is at present. But if it is decided that the functions of the Revenue Courts are to be thus enlarged, I would, for the reasons above hinted at, suggest that the alternative procedure should form no part of the scheme for each district, but that for each district it be determined in what Courts these cases are to be

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brought. It may be that in one district the Revenue Courts would appear the most fitting tribunals, and in another district the Civil Courts.

"16. So far as the new procedure will do away with the notice of enhancement, and the difficulties and technicalities connected therewith, it is a great improvement on the old; but its provisions as to the preparation of tables of rates, enhanced jumabundees, and settlement jumabundees may throw a vast increase of work on the Collector and his staff, with which they will not be able to cope, unless the staff is largely augmented. It may be, however, that the provisions of section 117 will deter applicants from availing themselves of the Collector's assistance, for the Collector estimates the cost of the operation and demands a deposit accordingly, for the Collector's time, and that of other gazetted officers, is to be borne in mind in this estimate.

"17. I have already expressed myself opposed to the concurrent jurisdiction of Revenue and Civil Courts, but if that scheme is to be carried out, I see no necessity for the subordination of the Collector to the District Judge as is provided for in section 130. If it appears to a Civil Court desirable that the cases on its file should be disposed of by the Collector, it can make a recommendation accordingly to the District Judge. The District Judge can then transfer them to the Collector. This should not be permitted. The procedure should be that the Judge having received the Civil Court's recommendations should refer to the Commissioner, who is acquainted with the state of his subordinates' files, and the various kinds of work he has on hand as Magistrate as well as Collector. If the Commissioner thinks proper that the Collector should receive these cases he can advise the Judge accordingly and the cases can then be transferred. There are other provisions which are objectionable for the same reason. The power of supervision, revision, and reversal, implies a superiority in experience and ability on the part of the functionary exercising it to those over whom he is to exercise it. The system under which members of the Civil Service are Collectors or Judges precludes the guarantee that a very experienced and senior Collector may not be working in a district where the Judge is very junior and far inferior to him in experience and reputation.

"18. I may state generally that the feeling of landlords in this district against the Bill is very strong indeed. The ryots would naturally hail a measure which they believed would increase their profits and privileges at the expense of their landlord."

III. The Collector of Furreedpore states as follows—

"2. *Chapter I of Government letter dated 5th July* 1880.—The arbitrary rule proposed by the Commission in section 11 of the Bill is undesirable. I should prefer to let the matter alone. The 100 B rule would unnecessarily disturb existing relations which are tolerably well determined.

"3. *Chapters III and IV.*—It would be far preferable to declare at once that all resident ryots have a right of occupancy so long as they pay their rent, and cannot be ejected except by the Civil Court, to creating different grades of occupancy rights with the objectionable proposals about compensation. The advantages of one rule without exception would be very great, and no real injury would be done to the zemindar who would much prefer such a measure to the complications and innovations proposed in the Bill. It would save a vast amount of litigation, and be a measure that could not be misunderstood by either party—the zemindar or the ryot. The theoretical distinction between the rates payable by occupancy and other ryots that now gives cause to much discussion, but hardly exists in practice, would vanish even from theory. Besides, the present Bill would seem to provide in theory for the ryot to be rack-rented till he attains the status of an occupancy tenure-holder. At present the practice in Behar is for landlords to prevent their tenants from attaining to rights of occupancy by giving them temporary leases from time to time. I hear a large landlord in this district has issued hundreds of such pottahs in anticipation of this Bill becoming law. The ryots should be declared at once incapable of contracting themselves out of their rights. They are not voluntary agents in the hands of planters and others, *especially when in debt to them.*

"4. *Paragraph* 6.—I would decidedly not allow tenants of mokararridars and istimraridar to acquire rights of occupancy. It would only lead to complication of tenure and every link in the chain increases the burdens of the cultivating ryot. It is also against the custom of the country.

"5. *Paragraph* 7.—The ryots of occupancy tenureholders should not be allowed to acquire rights of occupancy. The tenure does not exist in practice.

"6. *Paragraph* 8.—As stated above, I would take away the power of a ryot to contract himself out of his rights, if right of occupancy is not granted to every resident ryot notwithstanding any agreement to the contrary.

"7. *Paragraph* 9.—In the interest of both landlord and tenant I am strongly opposed to making the occupany tenure transferable (*a*) by private sale or (*b*) in execution of a decree other than a decree for its own arrears of rent. It would be far better to leave the question entirely untouched and to natural development. In some parts of the country the tenure has already become transferable. If the tenure is declared transferable by private as well as by public sale, the landlord should leave the right of objection to

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purchasers to be decided by the Collector. The landlord's grievance is not a sentimental one. It is a fact that under-tenures are purchased by rival landowners, and even by tenure-holders to annoy the superior landlord. In this district, Chawdhury Golamally used by this very means to harass his bitter enemy and landlord Baboo Kali Krishna Tagore, and had not his purchases been declared by the Civil Court to be invalid, occupancy right not being purchasable under the present law, he would have succeeded only too well in his object. That it would be equally against the interests of the occupant ryot himself to make his tenure transferable, is clear if the Deccan Commission is to be believed; and without going so far for proof, it is, I think, easily to be seen that the tendency of land tenures as well as offices in India being to create new and inferior holdings and officers, each sale would have a tendency to remove the occupancy tenure-holder further from the cultivation of the ground, the result being that the tenure itself would become merely a new link in the chain between the Government and the land, and an additional burden on the ryot. If the tenure is to be made saleable, some provision should be added to insist on the occupant being really, and not only in name, an occupant ryot. The landlords, I believe, are so adverse to unrestricted transfer, that if this proposal of the Bill were given up, they would be willing to acquiesce in rights of occupancy, properly so called, being given to every resident ryot, which is, I believe, what has by custom always been recognized as his right, though *de facto* this right has often been wantonly interfered with.

"8. *Para.* 8.—Ryots should not be allowed to contract themselves out of their right. This is especially a necessary provision in Behar, where the ryot is not a free agent. As a rule, I believe, pottahs for a term are given to ryots holding under indigo factories, in the belief that the ryot is thereby precluded from acquiring a right of occupancy.

"9. *Para.* 9.—I cannot see myself why the tenure should be saleable, and yet not mortgageable. It is true mortgage generally ends in a foreclosure, and that it may be said there would be more temptation to mortgage than to sell. But one is as bad as the other. I am against both. I am aware that refusal of a right or benefit to a man on the grounds of its not being good for him is a course open to objection; but the Deccan ryot's experience is quite a sufficient answer. If what is wanted is a contented cultivator, with a certain amount of civilization and comfort, leave him the status of cultivator; do not make a landed proprietor of him, with too much pride to work the land himself; only secure him from disturbance, and give him the enjoyment of the fruits of his labour.

"10. *Para.* 10.—No opportunity should be allowed by the law itself to evade the law. Ryots should not be allowed to contract themselves out of their rights. They are not, in Behar at all events, free agents. The essence of the right of occupancy is freedom from ejectment so long as the rent is paid.

"11. *Para.* 11.—The rates allowed are very high, and will do as a limit. I am quite aware that over 50 per cent. is often taken, but I am inclined from personal experience to believe that this extreme rate is tempered by a leaning in favour of the ryot on the part of the village officers who superintend the Division.

"12. *Para.* 12.—I am not sure that it is possible or desirable in the different and very varied circumstances of Bengal, to fix the limit proposed. Rents are very high in Hooghly and elsewhere; but certainly considering that what is called rent is really nothing more or less than land-tax, the limit proposed seems quite wide enough. But the limit of double the present rent is sufficient to meet the case of newly-settled lands, and of lands held at cheap rates owing to distance from marts, &c

"13. *Chapter VI.*—Opposition on the part of landlords to the provisions of this chapter are, I believe, mostly founded on misapprehension. The market value of the land is taken to be the value of the 'jote' in accordance with what is really still now, as much as before the permanent settlement, the common law of the country, which considers the ryots rather than the zemindar the 'proprietor' of the soil. At the same time I do not think there is any necessity for legislative interference, as I do not know of any grievance; but I approve of the provisions of sections 41 and 42.

"14. *Chapter VII.*—The provisions of this chapter (VII) will be of use in Eastern Bengal, where the judgment-debtor's shifts are protean in type. I would add a legal presumption that a transfer to a near relative was a benami transfer.

"15. *Chapter VIII*—Chapter VIII is a great improvement on the present law, but in my opinion some drastic measure, with a really powerful sanction is essential to the peace, security, and prosperity of the country; and in connection with transfer and registration of rights; I wish it were practicable, perhaps by increasing the status of the putwari and creating him a registrar of tenures, under-tenures, and ryots' rights of occupancy, and insisting on each ryot having a registered document attesting and setting forth his right and a genuine receipt for rent paid, to put an end to the present utter uncertainty of rents, extent of holding, and payment of rent that prevails without exception all over Bengal. The criminal Courts are always being afflicted with complaints about disturbances of tenures in which it is quite impossible to ascertain who is the rightful occupant; and if the case is with great reluctance carried to the Civil Court the same uncertainty necessarily prevails, the result being in all cases a certain amount of injustice, as it frequently happens that both parties, owing to the neglect or fraud of the landlord or his agent, have really some interest in the same land.

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"16. *Chapter IX.*—Much capital is made by landlords of the grievances of coparceners being obliged to appoint a manager, but this step is quite necessary as well as the permission to ryots to deposit rent where the coparceners quarrel. As regards the service of notices it is objectionable that the costs will often be too great. It may be replied that this will act as a punishment; but I think this should not be so, and some sort of *general* notice on a printed form, hung up in a fit place, *e.g.*, in a glazed frame might be devised in which the zemindars or their agents might see at a glance whether the notice concerned them. The provisions of right to receive pottahs and receipts for rent are all very good, but are left to be enforced in the Civil Court or under section 88. As I have stated above, some much more drastic measures with real sanctions are required. It would perhaps surprise many Government officers to be t 'd that in parts of this district, and more or less in Eastern Bengal it is rarely the custom to give receipts. One may imagine the zemindar saying—'Oh! trust me all in all, or not at all.' Now these tenants are not the down-trodden ryots of Behar, and the conclusion I draw (but it is only an inference of my own), and I am open to conviction, is that the ryots are such 'a bad lot,' and have such unscrupulous advisers that the landlord concludes his only safety lies in being able to affirm with certainty that every receipt presented by a ryot must necessarily be forged. Still this is a very bad state of things and must, one would think, end in disaster. Bad as it is, the with-holding of receipts is as nothing compared with the evil attending land being held and leased without any reliable record. Half the murders and riots of Eastern Bengal, if not more, are to be laid to this door, as also the chronic opposition of landlord and tenant.

"17. *Chapter X.*—The provisions of this chapter are unexceptionable. The objection that one dissatisfied small proprietor may compel the rest of the cosharers to appoint a manager, or that a general resort may be made by small proprietors to this section to secure Government management are not worth much.

"18. *Chapter XI.*—All the provisions of this chapter, especially as to the away-going crop, are good; but I would not allow the tenant to cut trees though planted by himself without consent of his landlord, as they are attached to the soil and the right would be absurd and be detrimental. But I would insist on the distinction as regards liability of the tenant to pay half the fruit as rent; that was part of the customary law of the country in one part of Behar (Sarun) though it does not prevail in Chumparun, and which is, that where the ryot planted the trees in land for which he pays rent as for arable land, the whole of the produce of the trees belonged to him. It is manifestly unjust that he should pay rent as if he grew barley and, besides, half the produce; as well he might be asked to pay a rent for land and half its produce of barley or wheat. As regards avoidance of tenures I would require the proprietors of tenures or under-tenures to give the purchaser notice of the existence of their tenures.

"19. *Chapter XII for Behar.*—The provisions of sections 81 and 82 are very necessary. Indigo-planting has turned the ryots' holdings topsy-turvy. The first thing a farmer would do was to ask his ryots how many annas in the rupee they were willing to give up without an appeal to force (this latter was really the alternative, though not always expressed, and I don't mean I blame them, for they are of the opinion that their position and rights are those of a landlord in England, and the idea is favoured by many things). The ryots would, for a quiet life, perhaps concede five annas in the rupee of his holding. This was taken possession of, but in a year or two it was found desirable to have all the indigo lands in one part, or in a particular kind of the lands in a hollow or on raised ground whatever best suited the purpose in the particular circumstances of the case. This arrangement upset and required the re-arrangement of nearly every holding in the village; and coupled with the giving of leases for terms only, was supposed to effectually prevent the acquisition of rights of occupancy. But I would go further, and give every resident ryot a right of occupancy. Section 83 is good; sections 84 and 85 are good; but I doubt if they will be effectual, and I do not exactly consider the filing of the jumabundee papers an unmixed good or an effectual measure, though I scarcely know what to propose. Section 86 is only a tentative measure, but a step in the right direction. I do not see why the measure should not be increased, tempered by the application of the enhancement suggested in Field's Digest, Appendix B, on the plan of the Tithes Commutation Procedure.

"20. *Chapter XV.*—I agree with Mr. Dampier, and generally, I would restrict all action in the matter of what is really a land-tax to the executive branch of the Government. It seems abominable that the millions should be sacrificed to the few, contrary to actual and known rights vested in the former; and that the millions should be rack-rented and kept in a state of almost abject poverty on pretence of realizing what is really and is still spoken of and believed by the ryots to be a Government land-tax, the whole of the odium of the wretchedness resulting, falling on the Government, thereby discrediting and nullifying every thing that Government attempts to do for the benefit of the people. And I may add, perhaps, that the best way of helping the people is to keep money in their pockets, which is a very different thing to the custom which is to use every effort to take it out of them, and with that object to throw the weight of Government on the side of the oppression and cruelty of the landlord. I don't mean to say that the landlords do not require Government help. In Eastern Bengal they do; in Behar and in some parts of Bengal they do not.

"21. *Chapter XVIII*—I think this chapter is well contrived, but do not see why the Small Cause Court precedure should not be extended. I see no great difference between rent and money

due on bonds. But all difficulty depends on the uncertainty of tenure, rent, holding, receipt of rent, and every thing else of the kind connected with land. Whatever is done, the payment of rent due should be compelled as easily and quickly as possible."

IV. The Collector of Backergunge reports—

"2. *Section* 11, under which any person to whom more than one hundred bighas have been demised by a single demise, otherwise than for a term, or year by year, is made a tenure-holder or under-tenure-holder, is open to this objection, that the position it is intended to define would appear to be sufficiently defined already. In their paragraph 20, the Commission say that it is impossible to discover any principle of distinction between ryots and tenure-holders or under-tenure-holders, and in their next paragraph they proceed to give their idea of, the original conception of a ryot. But there seem to me to be other distinctive marks which have been overlooked.

"3. A ryot has a status as such given him by his landlord, accepted by himself and not unfrequently expressed in the terms of the lease. Another distinctive mark attaching to him is that the rate of rent he pays is always higher than that paid by middlemen and under-tenants. Why should these distinctions be ignored, and why should he be turned *nolens volens* into a tenure-holder, simply because he holds more than 100 bighas upon one demise, and not as a yearly tenant or for a term of years?

"4. Take now some concrete examples of the unequal way in which this section will work—

"(1). "X," a ryot, takes a large holding, say 200 bighas, intending to cultivate it by the labour of his four grown-up sons, and with such assistance as most ryots get from their neighbours. He dies in a year or two, and the four sons divide the land equally, but without any reference to the zemindar, that is, the 200 bighas continue to be recorded as one holding. How would section 11 (*a*) of the draft Bill apply to such a case? Equitably the four sons are ryots; legally, I suppose, they would be tenure-holders, and the landlord would be unable to resist it.

"(2). Here is another example—

"In accordance with a usual practice, four brothers after taking, in the name of the eldest brother, a holding of 200 bighas, divide it amongst themselves into four holdings of 50 bighas each. Under the new Bill the eldest brother becomes a tenure-holder, and the three others with an exactly similar position remain ryots.

"5. It is not likely that the ryots will think enough of their new-born dignity as tenure-holders to sit idly at home instead of labouring as before with their own hands. But unless they do what sort of settlement is to be made with them? Are they to be treated first as ryots paying rent themselves, and afterwards as tenure-holders getting a percentage for taking rent out of one pocket to put it into another? And if not, are they liable to enhancement in the same way as a ryot with rights of occupancy; that is, is section 11 not to apply to such land as they retain in their own hands? The area so held is not a constant quantity, and this introduces another element of uncertainty.

"6. "Y" is a nim-haoladar paying at nim-haoladari rates: 'Z,' his neighbour is a ryot paying at ryoti, that is at higher rates, and under section 11 he becomes a tenure-holder. In the case supposed, and there will be many such, the tenure-holder will pay the higher, the under-tenure-holder the lower rate. The result will be an anomaly, and anomalies, because they are anomalies, give rise to heart-burning and are regarded as evidence of injustice.

"7. *Section* 10 enacts that in no case shall the enhanced rent of a tenure or under-tenure be more than double the rent previously payable Now section 11 will turn many ryots into tenure-holders, and there are a number of ryots who hold land at very low rates or have holdings, the actual area of which is much in excess of that recorded. Because a landholder has not measured, or because for some reason of his own he has let the land at less than the prevailing rate, is he to be prevented for ten or perhaps twenty years, from getting the rent fairly due?

"8. *Chapter III, section* 20.—A right of occupancy is saleable in execution of a decree for arrears of rent only. It is transferable by private sale, but not by mortgage.

"The effect of this will be that the ryot will have to sell outright forfeiting all chance of redemption, and a private sale is far less likely than a public auction to secure a good price.

"9. *Section* 20*E*.—An occupancy ryot can only be ejected for breach of a written stipulation, the penalty for which was declared to be ejectment. The stipulation will therefore always be made, and it is difficult to see how the ryot can be prevented, or why he should be prevented from stipulating that he shall not receive compensation under sections 29 and 30.

"10. *Chapter IV, section* 26.—Eviction of a ryot who has held three years.

"I would except pykast ryots from this section for the following reasons—

"In newly cleared holdings in the Sunderbans, neglect for one year will result in null jungle springing up to the deterioration of the surrounding lands, and the zemindar has therefore to be careful that none of his land is left fallow. Now, in Sunderbans, the ryots are nearly all non-resident, living a day's journey or more away, and visiting their Sunderban

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jotes only after they have cultivated what land they hold in their own villages. Under the law, as it now stands, the zemindar can protect himself against neglect on the part of these ryots by letting out the land to some one else; but under the section under notice, the absent ryot will be able to sue him, and his defence, reasonable and proper as it would be, might very well be pooh-poohed in a civil court. Even supposing common sense to prevail, this would not protect him from being sued, and our courts in Eastern Bengal have so many hangers-on that a chance to sue is seldom or never foregone if the would-be litigant can defray the expenses. I would therefore restrict this section to khodkhast ryots.

"11. Generally, as regards this chapter, I am inclined to think that as regards Eastern Bengal it is a mistake. The main cause of the difficulty in our collections here consists in the fact that the ryots are only too ready to withhold their rents, and that when they combine to withhold them the zemindars have no prompt and effectual means of realizing. I am opposed therefore to any legislation which encourages the tenant, already often enough a troublesome and dishonest defaulter, at the expense of the landlord; and I am none the less opposed, because the loss must in the long run fall upon the State, the paramount owner of the soil. I do not advocate any retrogade legislation, but I do say that we have gone far enough, and that the helpless and down-trodden ryot shall be dismissed as a creature of the past.

"12. Upon section 27 I have no remarks to make, but section 28 will enable ryots, by combining, to resist enhancement, to seriously harass the zemindar, and may eventually result in a decrease of the value of land. Section 30 directs that if the landlord and ryot cannot agree, and they seldom or never will agree, the Civil Court shall determine the amount of compensation. The objection to this section is that the costs will be heavy, and the only persons to benefit will be the members of the legal profession. It is, too, perhaps, not quite certain if a moonsif is qualified to give an opinion upon a matter which supposes the possession of special knowledge and special training.

"13. It may, or may not, be advisable that occupancy rights should be attained in a less time than at present; but the creation of a second class of occupancy ryots seems a mistake, because introducing a needless complication in what would be otherwise a perfectly intelligible change. In connection with this section 19, explanation C, allowing the right to be acquired by cultivators, under occupancy ryots may be considered. It amounts to the same thing, making two grades of occupancy ryots paying rent at, of course, different rates, and I would reject it for the same reason.

"14. *Chapter VI.*—Land for building purposes.

"*Section* 41. *Right of occupancy in land let for building.*—This is a novel provision, and one which at first sight seems somewhat beyond the province of a Bill of this nature It cannot however take effect for 12 years, and its consideration is not therefore a matter of any urgency.

"15. *Chapter VII.*—Merger.—The principle of this is a thoroughly sound one, and will be a great boon to purchasers, who now find themselves met by the old proprietor appearing as an Osat talookdar or nim-haoladar, and continuing to collect rents from the ryots. But the Bill as it stands does not provide for the fact that these subordinate tenures are usually held benami in the the name of some dependent, or female relative, and the reform will be infructuous unless this mode of evasion is met and counteracted.

"16. *Chapter VIII.*—Registration of Transfers. Under the zimba system, as practised in this district, is the cause of many breaches of the peace; a ryot or tenure-holder dissatisfied with his own landlord will transfer his holding to another proprietor, generally the enemy and the rival of the first, receiving it back again by another deed executed at the same time. If a tenure-holder, he becomes one of the next grade, and if a ryot without transferable rights, he gets out of the difficulty by describing himself as an under-tenure holder of some kind. The present, it seems to me, is a good opportunity for placing some restrictions upon this mischievous practice, and this might be secured by allowing the landlord to object to the transfer, the validity of the objection to be decided by the Collector, who, as District Magistrate, would find his hands much strengthened by being thus able to check, at the onset, the machinations which must now be suffered to proceed until a breach of the peace becomes actually imminent.

"17. *Chapter IX.*—Deposits of rents, &c. Section 61 directs that the duty of receiving these deposits, is to be transferred from the Civil Courts to the revenue authorities; but the necessity for this is not evident and is not explained. It cannot be connected with the sub-divisional system, because one or more moonsiffs are established at the head-quarters of every sub-division, and there are too many more moonsiffs than there are sub-divisions. It is certain that the change will very materially increase treasury work, more specially at sub-divisions where the staff is at present frequently unequal to the amount of business that has to be got through, whilst as the pressure will come at intervals, the work will fall to temporary subordinates, that is, to men more or less inefficient and untrustworthy, as in accordance with the usual native habit of procrastination the ryot will keep the money in his own hands till the last safe moment, the greater part of these deposits will be brought on the eleventh and sixteenth of Ashor, Ashin, Chait or Poush, or a day or two earlier. Now the June kist falls a day or two before or after Assar 15th, the September kist about Ashin 13th, and the March kist about Chait 16th; these deposits therefore will be coming in three times in the

year, just when the treasury staff are least able to attend to them; and the treasury and sub-divisional officers are in addition within 15 days to serve a notice on the persons named as landlords, coparceners or claimants. It is not said how this notice is to be served or what are to be the consequences of a successful attempt to evade service, or of inability to serve the notice in time Probably Government, or the unfortunate Deputy Collector, would be dragged into the Civil Court; they would at all events be tolerably sure to be served with a threat to sue, and the trouble and worry all this will give rise to may be imagined. Let the work fall where it should, in the Civil Courts; if not let a special receiver be appointed for each district, and let a fee be charged upon every deposit, or application to be allowed to deposit.

"18. *Chapter XI, Section 77b.*—Tenant may cut down trees. The right thus given is, I believe, contrary to the custom of the country. Under it an out-going tenant will be able deliberately to render homestead land useless by cutting down the fruit trees intended to give shade and privacy.

"19. *Chapter XII, Section* 84.—If this is to be made applicable, as it may be in Bengal, to the burga system, it will not unfrequently be the case that the costs of the award will be much in excess of the sum in dispute; and as people require to be protected from their own litigious propensities some limit will have to be fixed.

"20. *Chapter XV.*—A table of rates should prevent litigation and a vexatious resort to the Civil Courts; but I agree in thinking that the Collector should not be compelled to act in isolated cases, and that it should not be in the power of the District Judge to require the Collector to relieve his files by taking over an accumulation of cases. The preparation of nirikhbundees and jummabundees will require officers of considerable experience in settlement work, and probably some increase to the district staff will eventually be found necessary. The deputation of amlah, as contemplated by section 125, must be restricted to minor duties only.

"21. *Chapter XVI.*—It might perhaps be considered if these tenures should not be brought to sale, as are the present estates, four times a year, instead of twice as now. It is certainly not advisable that the power of summary sale should be extended further. The Commission well remark on the uncertainty there is as to the publication of notices, and in many instances this uncertainty is designedly brought about by the defaulter himself. His friends or dependents attest the surathal with the express intention of discrediting it afterwards by swearing that their names have been forged.

"22. *Chapters XVII and XVIII,* treat upon matters outside my province, and upon them accordingly I make no remarks."

V. The Collector of Myménsingh makes the following remarks—

"There are very few holdings in this district so large as 100 bigahs in extent under one demise. I have made enquiries of a large number of landholders and others, and find that by far the majority of holdings are from 10 to 50 bigahs Only in pergunnah Patiladaha, adjoining the district of Rungpore, are there a few such large holdings as over 100 bigahs, and in such cases the holdings are sub-let in portions, so that *de facto* the tenant is a petty tenure-holder in this district, therefore the enactment defining more precisely the distinction between tenure-holders and ryots will not make much practical alteration in the status of such persons.

"2. I do not think the ryots would object to give up all the supposed advantages of rights of occupancy if there were established pergunnah rates fixed by the revenue authorities. The rates might be fixed every ten years or so, and no other *rates* should be leviable. The fair rates are well known to all settlement officers, and ryots know them, too, pretty well when speaking disinterestedly. 'Bastu, zerat,' &c., each class of land has its 'nirikh' rates for 'chur' lands are well known also, and there is little difficulty in fixing such. The work would be laborious at first and expensive; but if the rates be once fixed by authority, a great deal of the present oppression and exaction by the petty amlah and retainers of landholders will be stopped. The ryot does not generally want a right of occupancy to make him hold on to his land. In this part of the country he holds on through thick and thin. What is wanted is a very simple law that can be read running. Once fix the rates authoritatively, and you will do all the ryot class want in this part of the world. There need be no distinction as to the length of tenancy as far as they are concerned.

"3. There are but few real *bonâ fide* suits for arrears of rent in this part of the country. A few petty talookdars may sue for such, but by far the bulk of such suits (not very numerous at any time in this district), are suits for arrears brought about by circumstances other than the ryot not being able to pay. There has been most probably a dispute between the landlord and tenant as to measuring the lands, taking of cesses or demand for kabuliyats, or the like, and the tenants have stopped paying rents to the landlord, hence the suits; the bone of contention, is almost always the rates to be levied. Both parties are ignorant and uncivilized. The landlord demands a preposterously high rate and the tenants retort by offering an absurdly low rate. To bring both parties to terms the whole question of rates should be settled. The ryots generally demand to pay rates fixed in the last century when the greater part of the country

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was jungle, tenants few, and waste lands in enormous quantities. All this is altered now, and there is likely soon to be a competition for land. The landlord naturally claims higher rates. The old pergunnah rates should, I think, be enhanced by the revenue officers to rates which would be considered fair rates in a settlement such as are made in the cases of khas mehals, or of alluvial accretions resumed 40 or 50 years ago. All ryots of five years' standing and upwards to hold at these rates, and no enhancement to be made except on the proof of the tenant holding more land in his cultivation than that for which he has been previously paying rent. This would, I think, satisfy both parties and remove a great many of the (to the people) abstruse intricacies of the revenue law on points of enhancement and rates of rent.

"4. At the same time I do not think that it would be just to the landlords to do away entirely with the right to distrain and eject. All who have in practice to do with the realization of rent know how difficult it is to get hold of any movable property of a defaulting tenant. The sales of holdings themselves, in satisfaction of the arrears, will, I think, lead to many objectionable practices, such as acquirement benami by landlords of large ryotwari tracts, and neighbouring zemindars will be trying to get a footing in the estates of one another, and much fighting and embroilment will ensue.

"5. If *therefore* the rates to be paid by him are once fixed, the ryot will care comparatively little as to his *occupancy* rights. Practically speaking, the only ground on which enhancement is *legally* demanded from the tenant is the fact of his holding more land than he is paying rent for. The measurement of their lands is very often fiercely resisted by the villagers, but once the measurement of the village or estates is *a fait accompli*, the only question to be decided is the 'nirikh' or rates to be paid for the *extra lands*. The landlord of course wants to assess them at the *new* 'nirikh,' the ryots hold for the old 'nirikh.'

"6. There are very few suits for enhancement on the ground of an increase in the productive powers of lands, except in the case of alluvial accretions (chur lands). And on chur lands the ryots are generally newly settled men or paikhast ryots of the 'asli,' who have got new jotes given to them on the chur. There are but few suits, too, for enhancement on the ground of the *rates* being *less* than those in similar villages in places adjacent. In districts like Mymensingh, where the landholders are nearly all *big* men, and the the estates very large, and the great mass of the tenants uneducated and ignorant to the last degree, very little regard is paid to the existing law, its (to them) abstruse principles are never studied. I doubt if 1,000 ryots out of the hundreds of thousands of ryots in this district could at this moment expound clearly any of the provisions of Act X of 1859. The only point on which they have any knowledge and make any *stand* is the *rates;* to have them settled therefore authoritatively would, in such districts as this, settle all the burning questions now constantly to the fore between landlords and tenants in Eastern Bengal; fix the rates and declare that all ryots of three or five years' standing are to be assessed only according to those rates, but at the same time give the landlord every facility to get in arrears of rent really due and unlawfully withheld.

"7. I see no objection to the tenants of mukarraridars, &c., being treated as other tenants.

"8. It is not common for ryots to sublet the holdings; the 'burga' system does away with the necessity for those who do not cultivate the whole of their holdings themselves, sub-letting to others; the 'burgadar' may of course in a certain sense be said to be a sub-tenant, but he seems to me to be more of a paid servant than a tenant. If a ryot does sublet his jote, the lessor generally provides for re-entry into possession after a few years, generally about three or five at the most.

"9. The chief objection to the transferability of the occupancy tenure is, I think, the likelihood that the land will in the course of years become split up into an infinity of very small holdings. The people of this country cling so much as it is to their native villages that, with the barest subsistence given them, they will not migrate. It will more than ever lend to produce a home-sticking poverty-stricken peasantry depending on agriculture for livelihood. Of late years many artizans, such as weavers, smiths, &c., have abandoned their hereditary trades and gone in for agriculture, and this provision of the law will, I think, draw more away from trade and other pursuits and turn them into agriculturists.

"10. The law, as to using land for building purposes as laid down in Chapter VI, is not consonant with the customs of the country. The land on which a ryot can erect his residence is always selected by the landlord, and to give permission to ryots to erect houses anywhere in an estate will lead to much strife and be a fertile source of rioting; it will never do in an outlying district such as this, whatever it may in more civilized parts.

"11. The provisions as to 'merger' Chapter VII, will, I should think, be easily evaded by the owner holding the tenures benami in the names of his sisters and his cousins and his aunts.

"12. The provisions of Regulation VIII of 1819 and other similar laws as to the registration of transfers have always remained dead letters in most parts of Bengal, and unless some severe penalty be imposed for non-registration, such will continue to be the case with the provisions of any new law. The work in most zemindari offices is not done in a sufficiently systematic or businesslike manner. To admit of any such rules being properly carried out, I am of opinion therefore that, as it stands, Chapter VIII will, like its predecessors in former Acts, prove a failure.

"13. The deposit of rent in the treasury or sub-treasury instead of the Moonsiff's Court will be, as far as regards this district at all events, a move in the wrong direction and entail

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much hardship on the ryots. There are in the whole district, with an area of 6,300 square miles, only four treasuries whereas there are nine moonsifees some of which are much more accessible than the treasuries and sub-treasuries. Then, again, it will throw a large amount of extra work on the treasury establishment which recent reports have clearly shown to be over-taxed with work as it is, and I do not see any adequate gain there will be by the change. Zemindars, owing to their rent suits being heard there, have all to keep agents at the Moonsif's Court, and as I have shown before the Moonsifs' Courts are more accessible to the ryots generally.

"14. In my opinion the procedure under Chapter X will be likely to involve Government in a deal of litigation. To those who are aware of how things are carried on in Bengal, it will be clear that action by the Collector before the Judge will probably end in Government being made a defendant in many civil suits; it places the Collector in the unenviable position of a suitor for little or no gain to the State.

"15. It is quite contrary to local custom for ryots to be allowed to cut trees. This is, perhaps, the *one point* invariably mentioned in all leases, or 'you shall not cut or damage trees.' The reversal of this old instituted custom would, if known to the masses, cause quite a revolution, as trees have been 'droits du seigneur' from time immemorial. However, we live in revolutionary and iconoclastic times, so I suppose trees will be handed over to be cut down for that will be the first thing a Bengali ryot would do with his trees.

"16. Mr. Dampier's remarks on Chapter XV will be, I think, endorsed by all revenue officers. I do not see, however, why the applicant, under section 112, should not be made to pay the cost of the enquiry, &c. as is done in a *partition* case. A Special Deputy Collector might, if needed for large estates, be appointed as they now are in those of partitions of big estates. This would enable Government to cope much more easily with any large influx of work in any district or districts arising from many applications, or, in, the case of one application for a large estate. In some estates in this district there are 20,000 or 30,000 ryots. Supposing an application was made under section 112 as regards such an estate, the mere statement of the ryots made under section 113 would be something sufficient to break down any ordinary Collectorate etsablishment, to say nothing of the usual current work which, as every one knows, is sufficiently heavy as it is now-a-days."

VI. I also beg to append in original a note drawn up by Baboo Parbutty Churn Roy, Superintendent of Dearah Surveys.

VII. I have gone through the law and compared it with the Digest. I consider the Bill on the whole to be an act of justice to the tenantry of Bengal. I think, however, that some modification as regards the compensation clauses would be desirable. Payment of a fixed fee or bonus for recognition of an acquired occupancy right is an idea suggested by certain zemindars here which seems deserving of attention.

VIII. As regards the procedure in Chapter XV, I agree in the remarks of Mr. Dampier, and as regards the concluding clause of section 45, I agree with the remarks of Mr. Mackenzie in paragraph 13 of his remarks.

Notes on the Rent Question by Deputy Collector Parbutty Churn Roy.

The point to be decided first is whether, by the terms of the Permanent Settlement of 1793, Government is barred from enacting such a law regarding the adjustment of rents, &c., as is proposed in the Rent Law Commission's report. I took the liberty of discussing this question at some length in the Rent Pamphlet published in 1876. The importance of the question, however, renders it necessary that I should go over the same ground a second time, especially as the right of Government to legislate on behalf of the ryots has been questioned by some writers of late.

Referring to Regulation I of 1793, which forms the basis of the Permanent Settlement, we find that, after declaring the assessment on land to be permanent, the Governor-General in Council made the following proclamation in Article 7, which forms section 8 of the Regulation—

"To prevent any misconstructions of the foregoing articles (fixing the Government revenue for ever), the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talookdars, and other actual proprietors of land. First, it being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay." The other declarations contained in this article refer to sayer duties, police allowance, &c., and do not come under consideration along with the present subject. The meaning of the above declaration seems to be very plain. It gives

power to Government to make whatever laws it might deem proper for the protection and welfare of the ryots, and zemindars have no power to object in consequence of such laws to pay the revenue assessed on their estates. It is impossible to put any other interpretation to the above article than that Government reserved to itself the power to frame such laws regarding the adjustment of rents, &c., as it might deem fit.

The meaning of the declaration becomes still more clear when read in the light of the despatches issued by the Court of Directors for the guidance of the Governor-General in Council previous to the conclusion of the Permanent Settlement, as will appear from the following extract from Harington's Analysis—

"The greatest obstacle to the intended system of permanency and certainty appeared to be the difficulty of providing for an equitable adjustment and collection of the rents payable by the ryots to the landholders. It might, indeed, be hoped that under the proposed system the latter would gradually learn from experience that their own interests are connected with the security and encouragement of the cultivators of the soil, and that the time would come when the advantage of every class of the community would be best promoted by leaving to every one the care and management of his own property without restriction. But (the Court add) as so great a change in habits and situation can only be gradual, the interference of Government may for a considerable period be necessary to prevent the landholders from making use of their own permanent possession for the purposes of exaction and oppression. We therefore wish to have it distinctly understood that, while we confirm to the landholders the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the landholders, and instead of diminishing will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Moghul Government, under which it appeared to be a general maxim that the cultivator of the soil, duly paying his rent, should not be dispossessed of the land he occupied. This necessarily supposes that there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar, for otherwise such a rule would be nugatory; and in point of fact the original amount seems to have been annually ascertained and fixed by the act of the sovereign" (Harington's Analysis, Vol. II, p. 189).

The same injunction is repeated in a later despatch immediately preceding the permanent settlement, in which the Court of Directors order as follows—

"In order to leave no room for our intentions being at any time misunderstood, we direct you to be accurate in the terms in which our determination is announced; and you will be careful to have it translated and circulated in the same manner as you have directed with respect to your own Code of Regulations. Having left it to your discretion to decide on the measures to be adopted relative to the waste lands, you will of course determine whether any reserve should be made in this declaration, with a view to that object. *You will, in a particular manner, be cautious so to express yourselves as to leave no ambiguity as to our right to interfere from time to time as it may be necessary, for the protection of the ryots and subordinate landholders, it being our intention, in the whole of this measure, effectually to limit our own demands but not to depart from our inherent right as sovereigns, of being the guardians and protectors of every class of persons living under our Government.*" (Harington's Analysis Vol. II, pp. 191-92.)

I have underlined the portions in the above extract which specially refer to the present question and throw light on the meaning of the reservation contained in Article VII. But there are some who would put quite a different interpretation on this reservation. A writer in the *Calcutta Review* for October last discovers the meaning of the reservation to be the power of Government for doing away with the abwabs, mhatools, and other perquisites, and the civil and criminal jurisdiction exercised by the zemindars.

To quote the reviewer at length—

"The Governor-General in Council notified to the zemindars to the effect following—We found you stewards and administrators; we have made you landowners; we have fixed the assessment for ever according to the existing value of landed property, leaving you to enjoy the benefit of all subsequent improvements; but you shall no longer be as kings and potentates over the ryots; the Government permitted you to exercise functions which properly belonged to Government; the ryots have not fared well under your *regime*, and their persons and property have not been properly protected; *it being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and other cultivators of the soil.* You shall not be allowed to claim

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any compensation for the loss of your questionable seignorial jurisdiction, privileges, and perquisites; *and no zemindar, independent talookdar or other actual proprietor of land, shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay.*"

The reviewer then goes on to say—

"The reservation in Article VII of the proclamation which was on the 1st of May 1793 enacted as clause 1, section 8 of Regulation I of 1793, has been inserted in italics in the above paragraph, and the context shows what we believe it *does* mean"—*Calcutta Review* for October 1880. pp. 359-60.

How the writer in the *Review* could arrive at such a conclusion as the above, it is impossible to make out. In the first place the zemindars were never kings and potentates over the ryots, and the English Government never "permitted them to exercise functions which properly belonged to that Government." If the writer had taken the trouble to look into the regulations passed previous to 1793, and which were in force at the time the settlement was made, he would have seen that long before 1793 there were established in the country Courts for the decision of civil and criminal cases, which were presided over by officers appointed by Government.

"Immediately after the receipt of orders from the Hon'ble Court of Directors to enter upon the duties of the dewany office, a Committee was appointed, consisting of the Governor, Mr. Hastings, and four Members of the Council who, on the 15th August 1772, proposed a plan for the administration of justice which the 21st of the same month was adopted by the Government. Under this plan which contains some original provisions yet preserved in our judicial code, mofussil dewany adawluts or provincial courts of civil justice, under the superintendence of the Collectors of the revenue, were established in each district. All disputes concerning property, real or personal; all causes of inheritance, marriage, and caste; all claims of debt, disputed accounts, contracts and *demands of rent* were declared cognizable by these courts; excepting the rights of succession to zemindaries and talookdaries, the decision of which was reserved to the President in Council."—Harington's Analysis, volume I, page 20.

The above clearly proves that since 1772 all civil cases, including *demands for rent*, in which zemindars were directly interested, were decided not by the zemindars, independent talookdars themselves, but by officers appointed for the purpose by Government. Equally conclusive evidence of the fact that the zemindars exercised, at the time of the Permanent Settlement, no jurisdiction also in criminal cases, will be found in the following—

"By the judicial regulations which were proposed by the Committee of Circuit on the 15th August 1772, and adopted by the President and Council on the 21st of that month, a code of criminal judicature was established in each district under the denomination of fouzdaree adawlut in which a kazee and mooftee, with the assistance of two moulvies as expounders of the law, were appointed to try persons charged with crimes and misdemeanours, and it was also declared to be the duty of the Collector of the district 'to attend to the proceedings of this court so far as to see that all necessary evidences are summoned and examined, and that due weight is allowed to their testimony, &c.' "—Harington's Analysis, volume I, page 299.

The writer in the *Calcutta Review* has in a foot-note in page 359, referred to section 66 of Regulation VIII of 1793, from which he infers that zemindars exercised civil and criminal powers previous to 1793. The section says—"Zemindars, independent talookdars, and other actual proprietors of land, dependent talookdars farmers of land holding farms immediately of Government, and all persons farming lands of the above mentioned descriptions of landholders and farmers of land and their respective officers, agents, servants, dependents, *and ryots are prohibited* from taking cognizance or interfering in matters or causes coming within the jurisdiction of courts of civil judicature, or the courts of circuit, or the Magistrates, under pain of being liable to the payment of such fine to Government and damages to the party injured as the court of judicature in which they may be prosecuted for the act may deem it proper to impose and award."

This surely cannot mean that the zemindars previously enjoyed jurisdiction, privileges, and perquisites in matters civil and criminal of which they were deprived by this section, but it means that not only the zemindars, but all persons whatever including the *ryots* were warned not to interfere as they had done in the times of lawlessness which preceded the establishment of the British rule with matters which properly belonged to the jurisdiction of the civil and criminal courts, established by that Government. Besides, as Regulation VIII, which contains the above section, was passed at the same time as Regulation I, containing the reservation under consideration, there could have been no object in making that reservation if it were intended to bear the meaning of the reviewer, for it ceased to have effect as soon as it was made. Government had taken into its own hand the power of administering civil and criminal justice previous to 1793, and had by section 66 of Regulation VIII of 1793, prohibited zemindars from interfering with the same, what, then, could have been the necessity for a further reservation of power for the same purpose? The reviewer has stated that the reservation was also meant to enable Government to abolish *abwahs* and *mhatoots*. But these had been abolished by sections 54 and 55 of Regulation VIII—the Permanent Settlement Law. This argument therefore equally falls to the ground.

In support of his view of the case, viz. that Government reserved at the time of the Permanent Settlement no power to itself to interfere at any future time between the zemindars

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and ryots, the writer in the *Calcutta Review* has made the following extract from the preamble of Regulation II of 1793—"No power will then exist in the country by which the rights vested in the landlords by the regulations can be infringed or the value of landed property affected."—*Calcutta Review* for 1880, page 358.

But it will not fail to strike at first sight a person reading the entire preamble that the writer has altogether misunderstood the object of that regulation, possibly in consequence of his not having taken the whole of the preamble into consideration. The entire preamble is therefore extracted below for comparison and examination—

Preamble of Regulation II, 1793.—"All questions between Government and landholders respecting the assessment and collection of the public revenue and disputed claims between the latter and the ryots or other persons concerned in the collection of their rents, have hitherto been cognizable in the courts of mal adawlut or revenue courts. The Collectors of the revenue preside in these courts as Judges, and an appeal lies from their decisions to the Board of Revenue, and from the decrees of that Board to the Governor-General in Council in the Department of Revenue. The proprietors can never consider the privileges which have been conferred upon them as secure whilst the revenue officers are vested with these judical powers, exclusive of the objections arising to these courts from their irregular, summary, and often *ex parte* proceedings, and from the Collectors being obliged to suspend the exercise of the judicial functions whenever they interfere with their financial duties; it is obvious that if the regulations for assessing and collecting the public revenue are infringed, the revenue officers themselves must be the aggressors, and that individuals who have been wronged by them in the one capacity can never hope to obtain redress from them in another. Their financial occupations equally disqualify them for administering the laws between the proprietors of land and their tenants. Other security therefore must be given to landed property, and to the rights attached to it before the desired improvements in agriculture can be expected to be effected. *Government must divest itself of the power of infringing in its executive capacity the rights and privileges which, as exercising the legislative authority, it has conferred on the landholders.* The revenue officers must be deprived of their judicial power. All financial claims of the public, when disputed under the regulations, must be subjected to the cognizance of courts of judicature superintended by Judges, who, from their official situations and the nature of their trusts shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of lands, and also between the latter and their tenants. The Collectors of the revenue must not only be divested of the power of deciding upon their own acts, but rendered amenable for them to the courts of judicature, and collect the public dues, subject to a personal prosecution for every exaction exceeding the amount which they are authorized to demand on behalf of the public, and for every deviation from the regulations prescribed for the collection of it. *No power will then exist in the country by which the rights vested in the landholders by the regulations can be infringed, or the value of landed property affected.* Land must in consequence become the most desirable of all property, and the industry of the people will be directed to those improvements in agriculture which are as essential to their own welfare as to the prosperity of the estate."—Harington's Analysis, volume I, pages 25-26.

It was accordingly enacted by section 2 of Regulation II that from "the 1st May 1793, the courts of mal adawlut or revenue courts shall be abolished, and the trial of the suits which were cognizable in those courts as well as all judicial powers whatsoever heretofore vested in the Collectors of the revenue or in the Board of Revenue collectively as a code of appeal or in any Member of that Board individually, shall be transferred to the courts of dewany adawlut"

The portion of the preamble on which great stress has been laid by the writer in the *Review* is, as will be seen from above, the penultimate sentence of that preamble. And it is hardly necessary to state that a perusal of the preamble and of section 2 of Regulation II, quoted above, clearly shows that the power that then ceased to exist was not the *legislative power* of Government, reserved in article 7 of the Permanent Settlement proclamation, but the power of the Collectors and the Board of Revenue as *executive officers* of Government to interfere judicially with the *rights vested* in the zemindars by the regulations.

The question now becomes what were the rights vested in the zemindars by the regulations? For this we have for our present purpose to refer to the Permanent Settlement Regulation VIII of 1793. The first 47 sections of this Regulation lay down rules for the settlement by Government with the zemindars, independent talooklars, and other actual proprietors of land. Sections 48 to 51 provide for the settlement by proprietors with dependent talookdars and *istemrardars* (*mukarraridars*) existing at the time of the Permanent Settlement. Section 52 gives power to actual proprietors *to let* their remaining lands, *i.e.* lands remaining after deducting the lands in the possession of dependent talookdars and istemrardars to under-farmers in whatever manner they think proper under the restrictions contained in the following section (53), which prescribes that lands so let are not to be taken charge of without an *amalnamah*; section 54 and the six following sections apply to lands held *khas* by the proprietor.

It has been argued by some that the words "the zemindar or other actual proprietor of and" is to let the remaining lands of his zemindari or estate under the prescribed restrictions, in whatever manner he may think proper," in section 52, apply not only to lands let out to under-farmers but also to lands held by ryots. A careful study of the preceding and succeeding sections will show that this is not the correct interpretation of the law. But admitting

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it, for arguments sake, to be the correct meaning, the zemindar does not, as will appear from the following, gain anything thereby. One of the sections which follow section 52 prescribes that the rents to be paid by the ryots shall be according to the established rule or custom. It runs as follows—

"LVII. 1*st*.—The rents to be paid by the ryots, by whatever rule or custom they may be regulated, shall be specifically stated in the pottah, which, in every possible case, shall contain the exact sum to be paid by them.

"2*nd*.—In cases where the rate only can be specified, such as where the rents are adjusted upon a measurement of the lands after cultivation, or on a survey of the crop, or where they are made payable in kind, the rate and terms of payment, and proportion of the crop to be delivered, with every condition, shall be clearly specified"—Section 57.

The meaning of the above section is rendered clear by section 6 of Regulation IV of 1794, which says—"If a dispute shall arise between the ryots and the persons from whom they may be entitled to demand pottahs (whether the rent be payable in money or kind), it shall be determined in the dewany adawlut of the zillah in which the lands may be situated according to the rates established in the pergunnah for lands of the same description and quality as those respecting which the dispute may arise."

There is nothing in Regulation VIII of 1793, or Regulation IV of 1794 which could lead one to conclude that the privileges therein granted applied only to the ryots of the permanent settlement. That they did not so apply will further appear from the fact that Regulation V of 1812, enacted twenty years after the permanent settlement, also refers to them. Complaints having been made to the effect that by that regulation the privileges of the ryots had been abridged, and their claim to demand pottahs at the pergunnah rates had been annulled, the Board of Revenue in a letter to Government, dated 1814, state as follows—

"A reference to the regulations in question, and in particular to section 3 of Regulation V of 1812, will show that so much of the seventh section of Regulation IV of 1794 as relates to the privilege of the ryots whose pottahs expire or are cancelled under Regulation XLIV of 1793 to demand new pottahs at the pergunnah rates is in no respect abrogated, nor their right anywise detracted from. On the contrary the ryot's title to pay according to established rates is recognized and enforced in the sixth section of the regulation in question, and in the following section provision is made for regulating the collection in the particular case in which no such rates are known"—Harington's Analysis, volume III, page 484.

I think I have succeeded in proving in the above that the only rate at which the zemindar was entitled under the regulations to realize rent from the ryot was the pergunnah rate. What was then the pergunnah rate it is impossible now, at this lapse of time to determine what that rate was; but this much can be taken as certain, that it was not a rate fixed by the zemindar, but by the authority of Government. This is manifest from the despatches of the Court of Directors, quoted above, and also from the preamble of Regulation IV of 1793, which says that, according to the ancient and established usages of the country, "the dues of Government from the lands (which consist of a certain proportion of the annual produce of every bigah of land demandable according to the local custom, in money or kind, unless Government has transferred its right to such proportion for a term or in perpetuity, or fixed the public demand upon the whole estate of a proprietor of land, leaving him to appropriate to his own use the difference between the value of such proportion of the produce and the sum payable to the public so long as he continues to discharge the latter) are unalienable without its express sanction." It follows from the above that it is the Government which has the power to determine the amount of rent payable by the ryot, leaving the zemindar to appropriate to his own use the difference between the rent payable to him by the ryot and the revenue payable by him to the public, so long as he, the zemindar, continues to pay the public revenue.

It has been argued by the writer in the *Calcutta Review* that section 60 of Regulation VIII of 1793 empowered the zemindar to alter the pergunnah rate from time to time. To quote his words—"Under section 60 he (the zemindar) shall allow all existing leases to ryots to remain until the period of their expiration, when of course he may let the lands comprised in these leases in any manner he may think proper; but as regards *khodkasht* ryots he shall not cancel their pottahs, unless within the last three years their rent has been reduced below the pergunnah rate, or unless the existing *pergunnah rate* itself is altered upon a general measurement for the purpose. This of course is not to prevent him from cancelling the pottah of all ryots, *khodkasht*, and others, if they are proved to have been procured by collusion."—*Calcutta Review*, page 355.

How the writer has come to the above conclusion regarding the zemindars' power to alter the pergunnah rate is what I cannot understand.

Section 60 of Regulation VIII, 1793, runs as follows—

"*First*. All leases to under-farmers and ryots, made previous to the conclusion of the settlement, and contrary to any Regulation, are to remain in force until the period of their expiration, unless proved to have been obtained by collusion, or from persons not authorized to grant them.

"*Second*. No actual proprietor of land, or farmer or persons acting under their authority, shall cancel the pottahs of the *khodkasht* ryots, except upon proof that they have been obtained by collusion, or that the rents paid by them within the last three years have been reduced below

the rate of the mirkhundy of the pergunnah, or that they have obtained collusive deductions, or upon a general measurement of the pergunnah for the purpose of equalizing and correcting the assessment."

In order to understand correctly the meaning of the above section, it is necessary to read along with it, the sections immediately preceding. It will then be seen that, the legislature first provided rules for the protection of the ryots generally, those that were then in existence and those that might come into existence thereafter. It then, in section 60, made special provisions for the protection of the ryots existing at the time of the settlement. The pottahs of the *khodkasht* ryots, existing at the time of the permanent settlement, could be cancelled only under certain circumstances, one of which was "a general measurement of the pergunnahs for the purpose of equalizing and correcting the assessment." This cannot mean that the pergunnah rate could be altered by the zemindar after a general measurement. It simply means that it after a general measurement, *i.e.* after a measurement of the lands of all the ryots holding in a pergunnah, it was found that a *khodkasht* ryot, the term of whose pottah was then running, paid a proportionately less amount of rent, for the quantity of land held by him than the other ryots, then, in order to equalize the burden of the public revenue or assessment imposed on the pergunnah, the rents of that particular *khodkasht* ryot might be so revised that he bore a fair and equitable share of the assessment on which the Government revenue had been fixed. This was intended to meet exceptional cases, where if such a *khodkasht* ryot's rents were not revised before the expiration of the term of his pottah the zemindar might find it difficult to pay the Government revenue fixed on his estate. I cannot better conclude the discussion on section 60, than by making an extract from a note written by the Hon'ble Mr. Mackenzie on 20th January 1880, on the subject of enhancement, which very clearly explains the meaning of this section—"Now obviously, as it seems to me, the whole of section 60 is meant to deal with cases of *existing pottahs*, and clause 2 merely contemplated *one* kind of *existing pottah* not dealt with by clause 1—a pottah, that is to say, that *would not necessarily expire after a fixed term.* These pottahs without specification of term, were those held by *khodkasht* ryots, and were not to be interfered with unless (1) they had been obtained at unduly low rates by collusion; or (2) the rates had been reduced below the pergunnah rate within three years preceding 1793, or (3) there had been collusive deductions given in them; or (4) unless a general measurement of the pergunnah took place in order to *equalise* and *correct* the assessment. The last clause of section 54 implies that the operation of revision was to be done once and for all. The whole object of clause 2 was to prevent those *khodkashts* who were holding at *less* than pergunnah rates from having those rates increased under *ordinary* circumstances in the course of that revision. It is impossible to believe that if this measurement and assessment was meant to be an ordinary and recurring way of raising the pergunnah rate, this would not have been distinctly stated instead of being wrapped up in a single phrase, coming in quite incidentally in a section regulating merely the treatment of existing *be-miydia* pottahs"—(*Calcutta Gazette*, 21st July 1880, page 417, paragraph 8).

It was not, as has been shown above, in the power of the zemindar to vary or alter the pergunnah rate, which was a rate fixed by authority. It consequently follows that the zemindar had no power under the permanent settlement regulations, and those that immediately followed that settlement, any power to *enhance* the rate of rents payable by ryots.

I have already, at the outset, proved that by virtue of the reservation contained in Article VII of the Permanent Settlement proclamation, Government has power to settle the rents payable by the ryot to the zemindar in any manner it deems proper. It has also power to legislate in favour of the ryot as against the dependent talookdar, for the regulations, which made a permanent settlement with the zemindar and the independent talookdar, conferred no special rights on the dependent talookdar, whereby he could claim exemption from laws which applied to his superiors, the zemindar and the independent talookdar.

In virtue of the power vested in it by the reservation mentioned above, Government has from time to time tried to settle the rent dispute between landlords and tenants by means of legislative enactments, and through the agency of the law courts. But the measures hitherto adopted have not succeeded, and new measures are now required. But any fresh attempt to effect the desired end by a mere legislative enactment must prove equally abortive as those that have been tried so long. If Government is anxious to restore good feeling between the landlord and the tenant, and reduce litigation, Government must effect what may appear to many as a very difficult and expensive process—a general settlement regarding the rates of rent payable for the different descriptions of land situated in the different parts of each district. *Such a settlement as this would be a settlement of what were known in former times as the pergunnah rates.* Though the task may at first sight appear to be very difficult and expensive, it will, in reality, be found to be not so.

In order to effect a settlement such as is proposed by me, the first thing to be done is to make a classification of lands. With this object, officers who have had *not less then ten years'* experience in the settlements of Government khas and resumed mehals should be deputed to go over the country, and *demarcate on the ground* in the presence of the zemindar's agents and the ryots the different *descriptions of lands in blocks*, not according to the crops they produce, but according to their productive powers. These blocks of land will be marked

out in the copies of the thackbust maps, with which the officers, who will hereafter in these notes be called the settlement officers, will be supplied. The settlement officers will be accompanied by a number of surveyors to carry out their orders in the field, and to prepare maps. No detailed ryotwari measurement will be made, as that is not necessary for making a general settlement of rates. The lands lying in a particular tract of country being classified and demarcated on the ground by means of permanent landmarks, the settlement officer will proceed to fix the rate of rent payable for each class. In doing this he will consult registered kabuliyats and civil court decrees, examine witnesses, and hold local enquiries. He will then fix the rates he considers fair and reasonable. The rates will be fixed by him in a somewhat arbitrary manner. But the information collected by him will enable the higher authorities to determine how far they have been fair and reasonable. The landlord, as well as the ryot, will be allowed an opportunity to object to the settlement officer's classification and adjustment of rates.

The maximum limit to which a rate of rent could be enhanced should be 50 per cent. of the rate prevailing at the time of the enquiry. But no enhancement exceeding 25 per cent. should take place at any one time—the maximum limit being reached after the expiration of ten years from the date of the first adjustment.

A general revision of rates should take place after the expiration of ten years from the date of the first adjustment, when no alteration should be made in the classifications except on the application of the landlord or the tenant. The point on which enquiry will be made will be whether there has been increase or decrease in the prices of the different kinds of produce grown in the land since the adjustment immediately preceding. To do the second inquiry in a satisfactory manner, it will be necessary to record the present prices of the different descriptions of crops grown in the lands for which rates are now fixed.

My experience as a settlement officer, extending over the districts of Dacca, Furreedpore, Backergunge, Tipperah, and Mymensingh, leads me to believe that such an adjustment o rents as is here proposed could be done at a cost of not more than Rs. 20 per square mile, or Re. 1 per hundred bighas, including the expenses for making copies of thackbust maps, &c. As the operations carried on under the above scheme, for the adjustment of rents, would be for the benefit of zemindars, the costs should be realized from them in propor ion to the areas of their respective estates. These areas would be found in the thackbust records It will be seen that the burden is not likely to be in any way heavy on the zemindars.

The rates being fixed in the above manner for the different classes of land, lying within a certain tract of country, it will be left to the civil court, in the event of a dispute between the landlord and the tenant, to decide as to the class to which a particular plot of land belongs. This the court will do after a local enquiry with the aid of the settlement officer's map.

Excepting in newly thrown-up churs and waste lands, which are to be noted in the settlement officer's map, I would not, unless there exists a registered agreement between the landlord and the tenant to the contrary, make any such distinction as at present exists between occupancy ryots and non-occupancy ryots. It is more than twenty years that Act X of 1859, conferring occupancy rights on ryots holding for 12 years and upwards was passed, and there are very few ryots in a village who have at present no rights of occupancy. A measure such as is here proposed will do away with a great number of cases in which the zemindar at present wrongly disputes the occupancy right of the ryot.

I would make the right of occupancy transferable and heritable. I would also give the ryot the power to mortgage his occupancy right, as it may often happen that a ryot when pressed by want, in times of bad harvests or scarcity will sell off his right when not allowed to mortgage it. This will be a greater hardship to him than if he were allowed to mortgage.

But I would not make the right of occupancy saleable for any decree other than for arrears of rent, or for a debt due on a mortgage bond.

The section 20 (*c*) in the Bill which requires the consent of the landlord when the holding of an occupancy ryot is divided among his heirs should in my opinion be struck out. If the right of occupancy is heritable, it shoud be heritable like a zemindari, and the same rules for the registration of the names of the new holders of the occupancy right be adopted as exist in the case of the heirs of a zemindar. The successors to the holding, the rent of which has been divided or distributed, should have the power, on the zemindar objecting to register their names in his *sherista*, to apply to the Collector of the district, on whose order the zemindar will be bound to give effect to every division or distribution of rent on the payment of the same amount of fee as is provided for succession to or transfer of, an entire holding under section 47 of the Bill.

Facilities for the summary realization of rents should be allowed only in cases where there is no dispute as to the amount of rent annually payable, the dispute being simply as to the amount paid.

Having in the above given a brief sketch of my views regarding the rent question generally, I shall close these notes with some remarks on the following sections of the proposed Bill.

Section 6.—The limits of enhancement of rent of tenures and under-tenures proposed in this section seem to be fair and equitable.

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Sections 11 *and* 12.—These sections should in my opinion be struck out from the Bill. The benefits intended to be conferred by converting large ryoti holding into tenures will extend to only a very small number of ryots. But as a ryot owning a large holding is better capable of bearing a comparatively large increase in rent than a ryot with a small holding, no special provisions in favour of such well-to-do ryots are required, especially as these new provisions will be looked upon by the zemindars as fresh encroachments on their rights.

Section 13.—This section declares all permanent tenures and under-tenures heritable, divisible, and transferable. There can be no objection to it.

Section 17.—This section proposes no new changes, but simply lays down the law which presumes that a rent of land which has not changed for 20 years before any suit or proceeding, has remained unchanged since the time of the permanent settlement. Now there are very few ryots of the permanent settlement time whose status remains unsettled since the passing of Act X of 1859. The retention of this 20 years' rule in a law to be now passed will only put fresh obstacles in the way of the zemindar. As it is proposed to give zemindars some special facilities for enhancement, and the ryots some special advantages as regards occupancy rights, I think the 20 years' rule of presumption against which the zemindars have always complained, and the necessity for the retention of which now hardly exists should be done away with. Section 17 should therefore be omitted.

Section 18.—The last clause of this section, which provides that the increase of rent for alluvion or the abatement of rent for diluvion, shall bear to the rent previously paid, the same proportion which the increase or diminution of area respectively bears to the previous area of a holding held at fixed rates, is not in accordance with the law of alluvion and diluvion (Act IX of 1847) so far as the increase of rent for alluvion is concerned. All alluvions are assessed at *full rates* by Government, and it would be unfair to give the zemindar an increase according to the rule of proportion laid down here. A ryot holding land at fixed rates has no more right to hold at proportionately low rates, lands subsequently gained by alluvion, than the zemindar of a permanently settled estate to hold land added subsequently to that settlement. This clause should accordingly be changed.

Section 19.—Explanation 3—(*b*). This forms a corollary to section 11, and should be struck out or not, accordingly as that section is struck out or not.

(*c*)—This is a very necessary improvement. There are many ryots holding for a long time under occupancy ryots. As the law at present stands, these ryots, who are known in many places as *corpa* ryots, have no protection against their landlords, the occupancy ryots, who subject them to very great rack-renting. I have met with many such cases in the course of the settlement of the Punchas Hazaree, and the Kalkini resumed estates in the Furreedpore district.

(*d*)—There can be no objection to giving occupancy rights to cultivators of *Khamar nij-jote*, or sir land, if the zemindar neglects to let out such lands for a term, or year by year. But the privileges to be derived under this clause should commence to date from the passing of the new Act.

Section 19—*Explanation* 4 (*h*).—It is fair that a ryot giving up in writing his right to occupancy rights when first entering a land, should abide by the terms of his contract. But a protection was necessary for ryots who, through ignorance, had been deceived by the zemindar, and had signed deeds which could be construed into a surrender of rights, which had previously accrued to them under the law. The last sentence of this clause is, I think, intended to meet their cases. It runs as follows—" No contract shall in any other case debar a tenant from acquiring a right of occupancy." It is not clear as to whether it applies to contracts executed previously. As there are numerous cases in which ryots have been deceived into giving up their rights, the redress intended to be given to such ryots by the new law should be made to have a retrospective effect.

Section 20 (*a*).—As I would give the ryot a power to mortgage the whole, or a portion of his holding, I would insert the words " or for a decree passed for a debt due on a mortgage bond " between the words " thereof " and " but."

Section 20 (*b*) *and* (*c*).—I would very strongly object to the provisions under these clauses which require the landlord's consent in the event of a transfer or devise of a portion of the holding (*b*) or of a division of the holding (*c*). It is not to be supposed that such a power, if once given to the landlord, will not be exercised in extorting money from the ryot whenever his consent shall be required. There is no reason why such a power should be given to the landlord. The transfer or devise of a portion of the holding, or the division of the holding, is not likely in any way to injuriously affect the landlord's interests; why, then, this restriction should be imposed on the ryot's power to deal with his right in any manner that suits him best?

Section 20 (*d*).—I have already given it as my opinion that a ryot should have power to mortgage. As regards the ryots of Eastern Bengal, of whom in the course of my duties I have seen a great deal, a restriction to their power to deal with their right is not required. Unless compelled by very great necessity they will not mortgage their lands.

Section 20 (*e*).—When a ryot has entered into a stipulation by virtue of which he is ejected, there is no reason why he should be entitled to a compensation from the landlord for any improvements effected by him. He must abide by the consequences of his act. Moreover,

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such cases are not likely to be many, and the hardship to the few ryots ejected under the stipulation will not be much.

Section 23 (*b*).—The limit of the enhanced rent under the third or fourth ground of enhancement, is under this clause proposed to be not more than *double* the rent previously paid. This would, I think, press very hard on the ryots in most cases. Very few of the Bengal ryots are wealthy. Most of them live from hand-to-mouth. It may be they are spend-thrift or improvident; but the fact remains that whatever they earn they generally spend. It is needless to state that where a ryot now pays an annual rent of Rs. 10, the raising of it to Rs. 20 will be a very great oppression to him. I have already said that I would not give an increase of more than 50 per cent. of the rent previously paid.

Section 23 (*d*).—Five years is too brief a period for allowing the zemindar the full benefit of the enhancement. I would give him 25 per cent. at the first settlement, and the remaining 25 per cent. after the expiration of ten years, when also addition may be made for any increase in price taking place in the meantime.

Chapter IV.—Of ryots who have held land for three or more, but not less than 12 years.

Chapter V.—Of ryots who have held land for less than three years.

I would strike out these two chapters, and would secure the end desired by them in another way. Under my plan of settlement, as explained above, all ryots, excepting those in newly thrown-up churs and waste lands, now being brought under cultivation, will be presumed to have a right of occupancy in the land held by them, unless there is any written contract to the contrary, under clause (*h*) Explanation (4), section 19. This is not likely to be greatly detrimental to the interests of the zemindar, but will, on the other hand, greatly reduce litigation and harassment to both zemindars and ryots.

Section 41 (*a*).—I strongly object to this section as it at present stands. It does not take notice of any possession previous to the passing of this Act. A large number of ryots, such as milkmen, potters, fishermen, weavers, &c., who have been residing in the same *baree* for a long time, will be thrown completely at the mercy of the zemindar by this law. Surely something should be done to protect them against the exactions of the zemindar.

Section 46.—The proviso to this section, which requires the consent of the landlord in case of division or distribution of the rent of a tenure, under-tenure, or occupancy holding, is highly objectionable. The tenure or under-tenure-holder, or ryot, should have power to compel, through the Civil Court or the Collector, the landlord to register the division or distribution of rent.

Section 52.—The provisions of this section should apply also to division or distribution of rents

Section 55.—I would strike out the last portion of this section, commencing with "in the absence of any such agreement or custom," as it is likely to make matters unnecessarily complex.

Section 57 (*c*).—Government should undertake to supply the landlords, at least at the commencement, with the forms of receipts mentioned in this section. They should be kept for sale both at the Sudder station and at sub-divisions.

Section 58.—The deposit of rent should be made in the Civil Court, as at present, for the reason that there may be disputes between the landlord and the tenant about the amount of rent, &c, and the applicability of the cases (*a*), (*b*), and (*c*).

Section 61 (*b*).—The cost for serving the notice should not be borne by the landlord if the fault lie with the ryot.

Section 71.—The restriction as to lands held at the time of the permanent settlement is not sufficient. Other lands of a similar nature may have been settled subsequently with tenure-holders, under-tenure-holders or ryots in exactly the same manner as those settled at the time of the permanent settlement, and the proprietors have now no power to do anything with regard to such lands.

Section 72 (*b*).—It should be also explained that though a landlord has no power to compel the attendance of ryots for the adjustment of rents or for any other purpose, nothing prevents him from asking the ryots to come to his kutcherry to adjust rents, if they choose to do so. It may otherwise often happen that the ryots, not correctly understanding the intention of the legislature, will not attend the landlord's kutcherry even in cases where such attendance may be both for their and the landlord's benefit.

Section 76 (*b*).—This clause is unnecessary under my plan of a general settlement of rates.

Part II.—Chapter XV.—Of proceedings to enhance the rent payable in money by ryots having a right of occupancy, or by tenure-holders or under-tenure-holders.

I have already, in a previous portion of these "notes," explained my views regarding the procedure to be adopted for making a general settlement of rates. It seems to me that this chapter should be entirely recast. It will multiply greatly the Collector's work to prepare ryotwari jummabundi or settlement jummabundi. All that the landlord and the ryot generally quarrel about is the rate of rent. If, then, the rate question is finally settled for both, they will have very little reason to quarrel.

In making this settlement the aim ought to be to equalize the rents payable for all lands similarly circumstanced, lying within a particular tract of country, and to give the zemindars

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some moderate increase. One set of rents will have to be fixed for ryots, holding immediately under the zemindar, and another set for those holding under occupancy ryots. The rents being thus settled, all the grounds for enhancement mentioned in section 22, with the exception of the fourth, namely that the prices of produce have increased, which will come into use ten years after, might be struck out. Under a settlement concluded according to my plan, the necessity for making a distinction between landlords having a permanent interest and those having it not, intended in explanation 1 of section 22, will cease to exist. Whatever the interest of the landlord may be, he will get neither more nor less than the rates fixed by Government.

Such a settlement of the land question as is proposed by me will, in all respects, be a settlement similar to the one conducted by Rajah Todur Mull. It will reduce litigation and restore peace and good feeling between the landlord and tenant. Nothing short of a general settlement like this will succeed.

Dated the 16*th November* 1880. PARBATI CHURN ROY.

N. T. W.—Reg. No. 10345J—133—15-1-81.

No. 1081, dated Chinsurah, the 22nd December 1880.

From—J. BEAMES, Esq., Offg. Commissioner of the Burdwan Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

IN reply to your No. 659A, dated 30th July 1880, I have the honour to submit the opinion on the Rent Bill drawn up by Mr. Ravenshaw before making over charge of this office to me.

At the time of making over charge, Mr Ravenshaw was prevented by illness from completing his report. The remarks on Chapter XVIII have therefore been written by me from his verbal explanation of what he intended to have said, and must be taken to express his opinions, though I entirely agree with him on this subject.

Remarks on the new Rent Bill.

I DO not consider it necessary to go over the much-debated ground as to whether it was or was not expedient to invest zemindars with proprietary rights under the Permanent Settlement, or whether those rights were infringed by the Rent Law, Act X of 1859. We must accept the Permanent Settlement as a fact which cannot be evaded, and the Rent Law of 1859 and its subsequent modifications as the outcome of the best consideration the legislature was at that time able to give to a most intricate and difficult subject.

While prepared to accept the position of zemindars as proprietors created by the British Government, I cannot concur in the view (not unfrequently contended for), that the right of proprietorship conceded to zemindars was limited only by the payment of a fixed revenue. The proprietorship conferred by the Permanent Settlement was limited and confined to the collection of customary rents from the rayats who were, prior to that settlement, the undoubted, as they are now the virtual proprietors and possessors of the soil paying their rents through the zemindar as the created and ostensible proprietor and Government agent for collection.

Regulation VIII of 1793 laid down clearly and definitely, that zemindars and others (legally constituted) proprietors might let the remaining land of their estates (not at that time held by mokurrereedars and talookdars who were to be protected from increase) in whatever manner they might think proper, subject to certain prescribed restrictions, amongst which the following were prominently noticed, that the rates of rent demanded from rayats were to be fixed according to the nirickbundi of the pergunnah, or upon a general investment for the purpose of equalizing and correcting the assessment.

Provisions were also made for the proper keeping of zemindari accounts, abolition of abwabs and cesses, issue of pattas to every rayat, and delivery of receipts for rent paid.

Measurement and assessment was a process apparently indispensable to the fixing of rates according to quality of land and produce per bigha, and this operation appears to have been periodically contemplated for ascertainment of the pergunnah nirickbundi, as according to the Regulations of 1793, ten years was the time fixed for currency of rayats' pattas.

The theory of the Permanent Settlement was that zemindars would manage and improve their estates, and would maintain a correct record of the rents and rates paid by every rayat thereon, and enter into fixed agreements by patta and kabuliyat with their tenantry at pergunnah rates.

The theory has not been followed by practical results. The created zemindars have for the most part either evaded or neglected their duties and responsibilities, and the majority by creating putnis and under-tenures have become mere annuitants on their estates. Properties have been encumbered and clogged with tenure-holders of different degrees, and it is only those of the lowest degree who are brought into actual contact with the rayats and cultivators of the soil, and these are the parties entitled to most consideration.

I am not in favour of revolutionary measures, and I think that legislation should rather take the form of consolidating the existing law and rulings than re-constitution of the relations between rent-payer and rent-receiver, which must produce an increase rather than mitigation of existing evils.

For all practical purposes it should suffice to re-enact the law as it stands with as little radical change as may be possible with reference to the conflicting interests concerned.

As regards the existing law, nothing can be more precise and clear than Mr. Field's Digest. The present law has been, with little variation, in force for 20 years, and so far as my experience goes, it needs only slight modification and simplification to adapt it to the real wants of all parties.

Government orders No. 2286½, of 15th July, have been communicated to all District Collectors, who have in their replies embodied the view of all parties consulted. I therefore submit District Collectors' reports, with enclosures in full, in order that the Board may be in possession of the views of all parties.

Not received.
H. J. S. C.

The following paragraphs embody my own opinions—

Chapter I.—I would reduce the limit of 30 per cent. profit to a tenure and sub-tenure-holder, in section 9 of the Draft Bill to 20 per cent., and also provide a minimum of 10 per cent., and in place of the word "30" would insert "20, or be less than 10."

I have neither heard nor read any substantial reason of more weight than those put forward by the Rent Commission in paragraphs 13 to 23 and 36 of the report, and I concur in thinking that the rule framed for defining the distinction between tenure and under-tenure-holders and rayats should become law. Some variations of the limit of 100 bighas have been suggested; but I am satisfied that 100 bighas is the limit which best coincides with the proper and original conceptions of a rayat, and that section 11 fairly embodies that conception.

In Midnapore district there are not a few holders of more than 100 bighas of jalpai lands who have not acquired rights of occupancy under the existing 12 years' rule, but who will, if the Draft Bill becomes law, be at once raised to the status of tenure-holders.

These men let at very low rents, and it was brought to my notice that the zemindars of estates in which these holdings are situated will be placed at a disadvantage, and will be unable to obtain adequate rents

But it appears to me that there is no reason why the periodical enhancement after periods of ten years provided by section 10, clause B, should not, in these cases, suffice where waste lands have to be cleared, and new cultivation started; doubling the rent every ten years appears to be a very equitable limit of progression.

Chapters III and IV.—There is a very strong feeling (in which I concur) in favour of omitting entirely Chapter IV of the Draft Bill, which, if passed, would either prove to be inoperative, or lead to a general endeavour on the part of zemindars to oust every rayat before completion of three years' occupation, and it would be far better to give occupancy rights at rates to be fixed according to Collectors' tables to all who have held these lands for three years and more, and I concur in the remarks made by Mr. Mackenzie, pages 111 to 113 of the Report, vol. 1. The Collectors' rates will be fair and equitable, and no zemindar has a right to expect to receive more or the rayat to pay less.

It is unquestionable that it will be just and proper to admit occupancy rights to the sub-tenants of mokurrereedars and istimrareedars, and I have heard no valid argument warranting withdrawal of this concession.

I do not, however, consider that any right of occupancy should be admitted to sub-tenants of an occupancy rayat. All such tenants should be tenants-at-will.

Section 19, *explanation* 4, *clause (h.)* I cannot advocate any compromise on this point which involves an important principle, and I would strongly object to allow a rayat to contract himself out of a right of occupancy. This right of occupancy will be the Magna Charta of the rayat, and it is a matter of public feeling that he be not allowed to be misled into depriving himself of his right.

Section 20, *clause (a.)* should be modified, and occupancy rights made liable to sale under any decree without restriction; if such rights are transferable by private sale or gift at the will of the occupier, it is unreasonable to bar sale in liquidation of a decree for debt. Similarly in clause *(d)* I see no reason why a rayat should not mortgage his occupancy holding; at present in most parts of the country he does so, and it would be exceedingly difficult even if expedient to eradicate the custom. The power to mortgage frequently prevents necessity for sale, and enables a rayat to tide over temporary difficulty.

Clause (e.) I would omit the latter part of this section. If it be allowed to stand, it will give a landlord power and opportunity to defeat the prohibition of ejectment entirely.

Section 21. I would place no restriction on the limit of 50 per cent. where rent is payable in kind, and omit the latter part of this section regarding special crops.

Sections 22 *and* 23, together with the Commissioner's remarks at paragraphs 46 to 62 of the report have my entire concurrence. These sections also appear to meet with general acceptance.

Chapter VI.—I have no suggestions to make. The provisions are just and equitable.

Chapter VII has met with general approval.

Chapter VIII is generally approved and accepted, and I can suggest no alteration except that provision should be made for a form of register to be kept by zemindars.

Chapter IX is with some slight modifications good and acceptable.

Section 57, *clause (a)*. There should be a column in the form of rent receipt, shewing the whole annual rent payable by the tenant. Clause *(b)*; on the back of the counterpart, the rayat should sign an acknowledgment of receipt of the original, and also note the rent paid by him.

Section 55. The kists payable by rayats should be so adjusted as to fall at least one month before the dates prescribed for payment of Government revenue.

Section 58. I would expunge the provision regarding previous tenders to the landlord. Money deposited is never tendered beforehand, and a rayat desiring to deposit would be afraid to tender. I would alter clause (*a*) and admit any tender where a rayat has reasonable grounds to suppose his tender would not be accepted if made to his zemindar.

Section 61. Notice should be served on the party entrusted free of cost, as it is not every zemindar who has an agent at the Collector's court.

Chapter X.—The provisions of this chapter are most excellent and beneficial to all parties.

Chapter XI.—Section 71 after the word "any rent," I would add "not exceeding 25 per cent." *vide* section 23. Section 77, clause *(b)* should not have retrospective effect. There are great differences of opinion, and different customs prevail in different parts of the country, and it is necessary to protect vested rights. No very important objections are raised to any of the provisions of this chapter.

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Chapter XII.—I think sections 84 and 85 might be made applicable to other parts of the country beside Behar, and power should be retained to extend them whenever and wherever found necessary.

Chapter XV.—The procedure here prescribed is complete though complicated; but I think the Collector as revenue officer, ought to have entire jurisdiction in cases of enhancement, and the concurrent jurisdiction of the Civil Court is undesirable and likely to lead to difficulty and friction.

Chapter XVIII.—There is theoretically little fault to be found and little alteration to be suggested to this chapter, but the procedure is certainly complicated and cumbersome.

It would be better, with a view to afford zemindars greater facility in realizing rents which are undoubtedly due, to provide that if any zemindar could satisfy the Collector that the accounts of his estate were regularly and accurately kept and were to be relied on, his name and that of his estate should be entered in a register.

The effect of such entry would be that the zemindar would thenceforth have the privilege of giving notice of any arrears to the Collector under section 9 of the Public Demands Act, and the arrears should then be recovered by the procedure of that Act. In order to preserve this privilege, the zemindar must however consent to his accounts being open to the inspection of the Collector or any other officer, not below the rank of Deputy Collector, whom the Collector may appoint for that purpose, and the privilege may at any time be withdrawn if it be found on inspection that the zemindar has allowed his accounts to fall into confusion.

N. T. W.—Reg. No. 10227J—118—6-1-81.

No. 518G, dated Soory, the 6th October 1880.

From—A. A. WACE, ESQ., Offg. Collector of Beerbhoom,

To—The Commissioner of the Burdwan Division.

IN reply to your circular No. 28T, dated 6th September 1880, I have the honour to submit the following comments on the report of the Rent Law Commission and the Bill framed by that body.

I do not propose to offer any detailed remarks on the many abstract principles which are to be found discussed, both from the historical and economical point of view, in the report and its appendices. I could certainly add nothing to the learning therein displayed, but I venture the following remarks on Mr. Mackenzie's justification of the radical changes which this Bill, if passed as it now stands, will work in the agricultural community which has grown up under Act X of 1859 and Act VIII of 1869.

Government required the Committee to consider the suggestions for amendment that have been put forward of late years, and I take it that the object of the proposed legislation is to correct the rent law practice and procedure in those respects in which the experience of the last twenty years has shown it to be insufficient, hard or indefinite. Some of the proposals made seem to go beyond this, and to attempt to revive claims which the legislation of 1859 laid to rest, and, if indeed they were then even made, to suggest amendments for which, so far as I am aware, there has been no demand and for which there exists no necessity.

Mr. Mackenzie justifies this going behind Act X by the somewhat ruthless criticism of the growth of that measure to be found at pages 110 and 111 of the report. A Rent Commission of the year 1900A.D. will certainly not be able to scout the proposals of 1880 on the ground that the "original file" was meagre; but it is surely rash to assume that because the revenue and judicial officers of 1859 put less on paper than those of the present day that they were therefore ignorant or unmindful of "byegone discussions on ryots' rights, byegone orders of the Court of Directors, and byegone representations of Collectors," or that they canvassed them less freely. We may surely believe that Act X of 1859 represented the best conclusions that could be formed by the best advisers of the then Government on the state of the things with which it had then to deal. On Mr. Mackenzie's own showing we cannot know more now of the conditions, the wants and aspirations of that period then was then known, and to legislate in 1880 in a spirit which we may now think should have guided Mr. Currie and his assistants in 1859 is surely a dangerous step.

The few criticisms, then, that I have to offer will be conceived in the idea that the best policy now is to define more explicitly the rights as then recognized in so many words, or by implication to supplement the procedure where deficient, to cut away the powers which the legislation of 1859 gave or recognized, but which have been abused, and to meet the wants which have grown during the last 20 years, either out of that legislation or from the development of the country.

Section 2, *Land.*—It may happen that a ryot has to leave the land where his house stood and to take another bit for building. The courts might hold that this new bit is distinct from the rest of the holding. Could not the last sentence of the explanation be corrected so as to meet this?

Chapter I, section 8.—The words 'or otherwise' after diluvion are either unnecessary or dangerous. Paragraph 51 of the report seems only to contemplate loss by diluvion, and the words seem to be likely to open a loophole for collusion between a tenureholder and an encroaching neighbour to the detriment of the landlord; anyhow, might not the words "from causes beyond the control of the tenureholder" be substituted for "otherwise"? Again, ought not a provision to be put in giving this right to clain enhancement or abatement only in respect of such tenure or undertenure-holders created before this Act comes into force in which the right to either is reserved in the deed creating it, or has been recognized by legal proceedings? It seems to me more than probable that in many cases rents have been fixed with reference to the possibility of either alluvion or diluvion, and in such cases to grant enhancement or abatement would be to vary the principle of the original contract, and this the Commission does assuredly not contemplate.

Section 9.—I agree in what Baboo Peary Mohun Mookerjee has said (paragraph 16 of his note) as to the 30 per cent limit. It seems to me far too high, and not only is it unnecessarily lenient to a class of men whom it is not desirable to encourage, but it would, I believe, have an unwholesome effect in fostering enhancement by tenureholders. The larger the profit you make it possible for them to realize, the greater will be their efforts to increase the "jumma" on which the profits are to be made. Why not leave the extent of the enhancement entirely to the courts, to be worked out on the rule of proportion between former rent and profits?

Section 10.—In the limit laid down here, due cognizance has not been taken of the enormous rise which has taken place in rents of building land. Near one of the railway stations of this district where the pergunnah rate for bustee was Rs. 8 a bigha, land now lets at Rs. 80. I see no necessity for laying down any limit, but would leave the degree of enhancement to the courts.

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I see equally little reason why the enhancement should be gradual, except in the cases where the enhancement on the lower rung of the ladder has been made gradual. This I think might be laid down.

Section 11.—The proposal to declare any person a tenure or undertenure-holder to whom more than 100 standard bighas have been demised by a single demise seems unobjectionable. I do not myself see why the limit should be confined to the cases of persons acquiring by a single demise. When a ryot's holding grows to more than 100 bighas, why should he not be treated also as a tenureholder? A gentleman with whom I discussed this remarked very truly that the law has, in the Stamp Act, recognized the fact that a person taking more than a certain amount of land is not an ordinary cultivator, though the limit of Rs. 100 rent is of course much lower than that now proposed.

Section 12.—I would cut this out for the reasons given in my comments on sections 9 and 10. Let custom, construed by the courts, still rule these tenures.

Chapter II, section 18.—Why should the right to abatement be limited only to cases of diminution of area by "diluvion." Section 8 recognizes the fact that diminution may occur in other ways, though I have objected to the way in which this fact has been expressed. I would add after diluvion "or other causes not existing when the rent was fixed and beyond the control of the ryot," or words to that effect.

Chapter III, section 19, *explanation* 3*a*.—There seems no objection to this. As far as I can make out, the possibility of occupancy rights accruing under a mukarraridar or istemrardar is now recognized.

Section 19, *explanation* 3*c*.—My enquiries as to how far the growth of an occupancy right in a kurfa ryot is recognized in this district have elicited more varied answers than I have received on any other point raised in the Bill. There is no doubt that the zemindar does sometimes recognize the growth of the right, and if he does it is valid. The result of my enquiries is that the proposal to declare definitely that it may accrue would work no great violence to existing practice, and would be consonant with the general feeling that the statutory 12 years' occupation gives a man in the position of a cultivator real rights in the land. I would, however, add: "Under a written valid agreement" after the words "year by year." This would I think compel a freer grant of pottahs, which is much to be desired in the relations between these classes.

Section 19, *explanation* 3*d*.—I would add the same words here also.

There seems to me an extraordinary omission in this explanation. None of the heads treat of a person holding immediately under a proprietor or landholder, other than khamar, nijjote or sir lands.

a—is the holding under a mokroreedar.
b—under a tenure or undertenure-holder.
c—under a ryot himself with a right of occupancy.
d—a holding of sir, nijjote, and khamar lands.

But on many estates the ryot is holding 'mal' land directly under a proprietor, and he surely has an equal right of occupancy with a man holding under a putnidar.

Section 19, *explanation* 4*d*.—The objections raised by Baboo Peary Mohun Mookerjee in paragraph 6 of his note (paragraph 97) to this declaration appear to me to have much weight. There is no doubt that many mukarraridars are making much more by their holdings than this Bill would render possible, and it is to be remembered that this class is one on which a rise in prices presses most heavily, while on the other hand they are generally less able to avail themselves of the law than many others who live on rents. I write in the belief that mukarraridars as a rule sublet their holdings. If explanation three (*c*) is passed, their subtenants will be safe, and I certainly do not see why a mukarraridar holding less than 100 bighas should be in a worse position than a ryot with a right of occupancy holding the same quantity of land.

Section 19, *explanation* 4*e*.—The words "as a tenant" in the first paragraph of section 19 will, I presume, prevent an ijardar from tacking on to his previous tenancy as a ryot some years occupation as ijardar so as to create a right of occupancy. I understand it to be the object of the two provisions to say that a man giving up an ijara shall be in no *better* as well as in no worse position as regards land held in the estate which he is giving up than he was on entering on the ijara. My experience of indigo districts points to the advisability of making this very plain.

Section 19, *explanation* 4*f*.—I would add "in writing" for the reasons given against explanation 3*c*.

Section 19, *explanation* 4*g*.—I would make the same addition.

Section 19, *explanation* 4*h*. This I think is fair. It represents the existing state of the law. The ryot is getting every year better able to take care of himself. There is no doubt that the tendency of this Bill if passed will be to foster the execution of formal leases, and the insertion of a clause barring the growth of a right of occupancy will be even more common than it now is. The enhancement procedure of chapter XV applies only to ryots with right of occupancy. Is it the intention of the legislature that the struggle between less privileged ryots and landlords, which will infallibly precede the settling down to leases and kabulyats, (or, as is too common, only the latter) should

be fought out under the single check provided by section 28? If so, I have no hesitation in saying this law will make things worse than they often now are, and litigation will be only fed by the "Compensations for Disturbance Rule." Why should not the intimate knowledge of the land and its produce which chapter XV must give to a Collector and his subordinates be also utilised to settle disputes between zemindars and non-occupancy ryots?* And in certain cases it is surely equally advisable in the interests of public peace that a Collector should take up the settlement of such a dispute of his own motion between these classes as between the landlord and the ryot with a right of occupancy. His Honour the Lieutenant-Governor seems, in paragraph 5 of the letter under report, to contemplate the use of the Collector's table of rates as a guide in all disputes between "settled cultivators" and their landlord, and, I believe, both the zemindari and ryoti interest would accept this as a final resort in cases of strong antagonism. The Lieutenant-Governor, however, couples this proposal with a concession of rights of occupancy to three years' ryots, as to which I reserve my remarks till I come to chapter IV. A table of rates having been ascertained for occupancy ryots, all that would be necessary would be to enquire and record the proportion which non-occupancy rates ordinarily bear to occupancy rates in the district in question, or even on the estate in question—see my remarks on section 112—and say that landlords should not be entitled to recover more than this, both sides would then, I believe, soon settle down to contract, and with this precaution contract would surely not have the dangers which some people seem to believe is inherent in it, as it affects the ryot.

P.S—See my remarks on section 112. The Bill does, I hope, admit of the Collector interfering, but it requires to be made plainer.

*Many a zemindar would, I am sure, gladly ask us to arbitrate between him and troublesome non-occupancy ryots.

Section 20 (*a*).—The declaration that a right of occupancy is not to be saleable in execution of any decree other than one for the rent thereof is of course corollary to clause *d* of this section, and on this provision I have to offer the following comments. Conceived in the spirit of benefiting the ryot, this absolute prohibition of mortgage will, I believe, be hard on him On no point have I received more unanimous opinions than on this. In the first place I do not believe it will effect the object for which it was designed. Many a ryot will resort to the not uncommon practice of selling outright on paper, with a verbal agreement that that portion of his holding mortgaged should be returned on the repayment of the purchase money. Such a condition will of course be uniforcible by law, but this will not make the mohajun any less ready to accept it, though he will assuredly quote a lower price for the holding than he would for an out and out sale. Secondly, the effect will be to throw the ryot still more into his zemindar's hands. Many zemindars are also mohajuns. As a rule the ryot likes to borrow from an independent mohajun, and this member of rural society is not invariably the rapacious creature which he is commonly represented to be; but if you prevent a ryot raising money by mortgage of his holding, the mohajun will not accommodate him, except at a very ruinous interest perhaps, and he must go to the zemindar, and in so going does he not practically mortgage his holding? The zemindars, you may be sure, will first devote any payments made to satisfy the mohajuni debt; it is only the balance that will go towards rent, and if it will not cover that, up goes the holding for sale.

Then, the necessity for this provision appears to me imaginary. The report of the Registration Department for last year shows that in 1879-80 the total number of mortgages registered of *all sorts* in Bengal was 99,015. Registration of course of mortgages of immovable property of lower value than Rs. 100 is optional, but as a matter of fact a mohajun generally does insist on registration when he takes a mortgage of an occupancy holding. Deduct, then, a fair allowance for mortgages other than those of occupancy holdings, and do these figures suggest that the occupancy ryots of Bengal require to be protected in this way? Look again at the figures given at page 384 of the Rent Commission's Report. Does the total number of sales of occupancy ryots' holdings—7,477 for all Bengal, suggest that this measure is necessary. Every man of course must speak for his own district in a matter of this kind. As regards Beerbhoom, I have no hesitation in saying that the prohibition of mortgage is not only unnecessary, but will be positively objectionable to the class in whose interests alone it is conceived. If this prohibition is made law, what is the ryot to do in a hard season? A holding, cattle, and ornaments, and a little spare cash make up, as a rule, his worldly wealth. The last goes very fast when a crop has failed. The ornaments in the family of the man in whose interests this section is conceived and in whose interests I am writing will not raise much money. For him to give his cattle in pledge is surely worse than for him to mortgage his land; he has literally no resource, and even if a liberal Government comes forward with advances to relieve him, Government is not to be pushed to take a mortgage of any part even of this holding which it is anxious to secure to the ryot. The ryot is not even to be allowed to sell a few plots out of his holding without his landlord's leave, and why should the landlord give leave when the refusal can but have the effect of throwing the ryot into still greater dependence on him? Zemindars even have declared this provision unwise and unnecessary, and the ryot of Beerbhoom at least would indeed in this matter pray to be saved from his friends.

Section 20 (*b and c*).—I neither see myself nor have I heard any objection to these clauses. To declare that all deeds of sale of occupancy holdings should be registered, is,

I suppose, beyond the power of the Bengal Council, but such a provision is much to be desired.

Section 20 (*e*).—I entirely agree in Mr. O'Kinealy's protest against the latter part of this section as recorded in paragraph 34 of the report. A landlord will doubtless always endeavour to defeat a right of occupancy, fortified as it will be by this Bill. The execution of agreements on enhancement offers a favourable opportunity for the insertion of a clause such as this section seems to recognize. Why should such a move be encouraged? Give the landlord equitable relief, and if the ryot cannot pay for any damage actually done, then let him be ejected. A landlord hostile to indigo occasionally makes it a condition of tenancy that no indigo should be grown on the land. Why should we give him facilities for interfering with the right of the ryot to grow what crop he likes. Ensure him his rent, and leave the ryot to do what he likes with his land so long as the condition of it is not permanently affected.

Section 21.—Rents in kind are rare in this district, and I need only consider this section as regards bhag-jotes. The cultivator of a bhag-jote gets on the best dhan land one-third of the dhan and all the straw. On poorer lands he divides the dhan equally with the lessor and gets straw into the bargain. This of course is the non-occupancy rate, and it will therefore be clear that the 50 per cent limit is well within the mark as regards the occupancy ryot. I do not indeed myself see why this provision should not apply to all ryots. I observe that in the corresponding section for Behar (section 83) no distinction is drawn between the privileged and non-privileged ryot, and I have shown above that the limit will suit the ordinary bhag-jotedar.

The provision as regards crops other than staple crops seems to me more objectionable. In many cases the 25 per cent of the gross produce would represent more than is now or could fairly be claimed, it does not of course follow that it would be given, but the suggestion of it would, I believe, raise claims which no one thinks of now, and it seems to me objectionable to foster the idea of payment in kind for such crops. The provision would give the cultivator 50 per cent more for his share than he would get for staple crops, but it is to be remembered that the cost of cultivation of these crops is excessive. In this district, for instance, mulberry and sugarcane are grown, but not perhaps in quantities which would justify their being declared staple crops. The cost of cultivation of the former is nearly three, and of the latter nearly four, times that of a crop of dhan, while, as regards rent an occupancy ryot at present pays no more for his land under sugarcane than for the same class of land if cropped with dhan, and the mulberry land is from rental of 25 to 60 per cent above that of good dhan land. The provision is unnecessary, payment in kind for these crops is hardly known. In many, such, for instance, as vegetables and mulberry, a share of the produce which does not come in a lump as with staple crops could only be taken with an amount of harassment to the cultivator which would much discourage cultivation and lead to much ill-feeling. In the Behar chapter, moreover, no such provision is to be found. It seems to me that the section would be better if there were no mention of staple crops, and if it ended with the words "shall not exceed 50 per cent of the gross produce;" or let this sentence run "such rent shall be regulated by the custom of the district, and shall in no case exceed 50 per cent of the gross produce in the case of the least paying crops."

On those sections of the Bill which relate to enhancement, I have to offer the following comments.

Section 22, *explanation* 1.—The opportunity seems to me a good one to take away altogether once and for all the power of an ijardar to enhance. The proposal to allow enhancements by a farmer with ten years of his lease still to run seems to me a half and half measure which does not meet the crying evil at which it is aimed. If enhancement proceedings are to be taken, let them be taken by some one with a permanent interest in the welfare of the ryots. If it is said that this is an encroachment on the rights of property, it must be answered that the power has been so abused that landlords have brought the encroachment on themselves. The ten years' limit does not strike at the root of the speculation which has worked all the evil of the ticadari system. Indeed, in the indigo districts of Behar, it will, I believe, make matters worse. The power to enhance is the lever by which a factory forces indigo cultivation. It will not be workable indeed if this Bill is passed where a lease is given for less than ten years, but the result will be to give longer leases than at present, and consequently a stronger lever in the end. The aim of the last few years' work in Behar has, I take it, been to encourage independence in the ryot as regards indigo cultivation and to let him make his own terms with the planter. This will certainly not be secured by making the planter stronger than he now is. In districts other than those where indigo grows, why should the man, on whom the old regulations enjoined consideration to his ryots, throw a jote in which this quality is rarely observed on the hands of a mere speculator?

Section 23 (*a*).—I do not understand on what principle it is proposed to give the landlord half the benefit of an increase in value effected otherwise than by the agency or at the expense of either landlord or ryot. If the landlord's fair share of the gross produce is held to be not more than one-fourth, why should he get more in respect of an improvement which has been no business of his? I should be disposed to say that, in this event, he should take the same share in the benefit as he formerly got in the annual value of the produce of the land before improvement.

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Section (*b*).—The proposal to limit the enhancement to double the former rent would work hardly in many cases; it is an innovation, and it seems to me quite unnecessary if the limit provided in the next clause (*c*) is maintained.

It has been well pointed out that the provision fines a man heavily for former forbearance to his ryots The lower rents now are the more hardly will it work, and even if it is passed, it should, I think, be guarded by an exception in the case of a landlord who has not enhanced for say 15 years.

Then, consider how it will work in an indigo district. A planter in 1880 gets a lease of a village for say 12 years; he gives the zemindar peshgi and rent, which are perhaps measured by what the zemindar thinks he could get out of the ryots for this term, if the latter enhanced, though they are often more than this. The planter does not, however, formally enhance, he takes his enhancement in the form of indigo arrangements; at the end of his 12 years he hands back the village with the jummabundi what it was in 1880. The zemindar in 1894 finds his income by rents much lower than what he got from the factory leaseholder and he goes in to enhance; he can only get double what the rents were in 1880: his neighbour may have got this amount of enhancement in 1882, and had the lessor held khas, he might in 1894 be receiving four times the rental of 1880. It may be said this serves him right for exploiting his estate, but I reply that the burden will fall eventually on the ryot. The zemindar will foresee this and make it an excuse for a heavier rental or a larger peshgi from the planter, for which naturally the planter will try to recoup himself from the ryot.

Consider moreover, on the other hand, the purchase this gives a factory on getting a renewal of the lease. How many zemindars would hesitate between falling back on a jummabundi with rates what they were 12 years ago and all the trouble to enhance them on the one hand, and a handsome peshgi down, plus a rental which represents enhanced rents on the other; my argument rests of course on the theory that indigo grown on the ticadari system is bad, and this I do strongly maintain. Make indigo cultivation more a matter of contract as between cultivator and capitalist (not farmer), and half the opprobrium of it goes. I write from three years' experience of an indigo sub-division in Nuddea, and two years' experience in a sub-division of Tirhoot where indigo was constantly in competition with the very paying crop of tobacco; and I trust what I have written on this head will also be considered as supporting my protest against giving a mere leaseholder any power to enhance. Explanation II, read with the former definition and explanation of "land," will bring this limit of not more than double previous rent to bear on bastu and udbastu land, and I may again remind you of the facts stated in my remarks on section 10 (*a*) as to the enormous rise in rents of lands adjoining centres of trade.

It seems to me far more just and politic to recognize the principle of proportion embodied in the last half of this section. It is one that is understood both by zemindars and ryots, and, subject to the check provided in the next clause, would be fair to both parties.

Section 23 (*c*).—I have considered this proposed rule that an occupancy ryot's rent' enhanced on grounds 1, 3, and 4, should not exceed one-fourth of the average annual value of the gross produce, by the light of the statistical reports of this district. The result is to show that the limit proposed would be a fair one, and a two-fifths share mooted in section 61 of the report would be excessive. I may illustrate this contention otherwise as follows:—The commonest form of paying for hired agricultural labour in Beerbhoom is for the "kishan" to take one-third of the grain produce or $\frac{20}{60}$ths, and a little straw. For this he gives nothing but labour. The ryot supplies land, seed, manure, and cattle. Now would it be fair to let the landlord have a chance of getting $\frac{24}{60}$ths against the ryot's $\frac{16}{60}$ths? surely $\frac{24}{60}$ths, against the ryot's $\frac{36}{60}$ths, or $\frac{2}{5}$ths of the ryot's net profit, is as much as he could fairly expect.

Then, as regards the limit for the rent of the subtenant or "kurfa ryot;" he is practically in the position of a kishan giving seed, manure, and cattle in addition to labour, for those three things Th Commission would give him not less than $\frac{7}{10}$ths, or $\frac{42}{60}$ths. Manure seed, and cattle certainly represent a higher value than labour, and from this aspect the proposal would look fair.

I can justify it in another way. An estimate has been given me entirely independent of these calculations, that on an average the kurfa gives an occupancy ryot an advance of 3 annas in the rupee on the latter's rent, take the latter's rent as $\frac{1}{4}$th of gross produce. Then the kurfa will pay $\frac{1}{4} + (\frac{3}{16}$ of $\frac{1}{4}) = \frac{1}{4} + \frac{3}{64} = \frac{19}{64}$ ths of gross produce, and the Commission propose that he should pay $\frac{9}{10}$ths or $\frac{48}{60}$ths.

The calculation taken in two ways justifies the proposed limit, but I would strongly advise that it be put in a simpler form by attaching a proviso to section 19, explanation 3*c*, that a ryot holding a right of occupancy should in no case be entitled to recover more than 3 annas in the rupee in excess of what he actually pays his landlord. We must remember that the kurfa ryot is a step lower in the agricultural community than the occupancy ryot; he has less idea of rights, arithmetic, and law than his substantial neighbour.

Some of the members of the Commission seem to fear that the effect of clause (*c*), explanation 3 of section 19, may be to raise rents unduly against the occupancy ryot. The proposal made above would, while recognising the system of subletting, prevent it being worked either to the detriment of the non-subletting ryot or to the pauperisation of the kurfa. Three annas in the rupee is not a profit that the best class of cultivators would be content with. There would always be a large and industrious class of occupancy ryots,

sitting at rates not above one-fourth of the gross produce, who would mark clearly this stratum in the agricultural community. On the other hand the kurfa of the non cultivating ryot would pay a rate allowing him a margin above pauperism. To give the non-cultivating or the cultivating ryot a right to realise up to three-tenths of gross produce for a kurfa, whatever they may pay to their landlord, will have a very different effect. Last, but not least, you give the kurfa indirectly the benefit of all the elaborate machinery of chapter XV and of the table of rates, &c.

Section 23d—Is, I venture to think, a mistake. It is considered a grievance by zemindars and it is an innovation on former rent procedure, and I am not aware that the want of such a provision has ever been felt a hardship Enhancement on grounds 1, 3, and 4 will not take effect till really the ryot has for some little time been making the profit which justifies the enhancement, and why he should not pay up at once what the Act declares to be a fair rent I cannot see. I could understand the justice of such a provision under ground 2, for land increases year by year in fertility on a chur. I see that enhancement on account of alluvion may be had at less intervals than 10 years It seems to me that this clause (*d*) would, if applied to ground 2, have a good effect in discouraging frequent appeals for enhancement on churs.

Chapter IV—Involves a radical alteration in law and custom, which is to my mind both unnecessary and mischievous. The change seems likely to encourage two things which cannot but cause ill-feeling between landlord and tenant First, the holding over after expiry of a 'mayadi' lease, and secondly, interference with the condition of the land.

As regards the first I do not overlook the provisions of section 79 (7) and section 33; but as I read the Bill the ryot inducted under a lease for more than three years, if he holds over, will be dealt with under chapter IV, and the benefits to be reaped by this chapter seem to me to offer a premium on holding over, and much litigation in the way of ejectment will be the result.

Why, again, should a ryot, who has taken land on say a seven years' lease be entitled to do anything more with the land than is covered by his contract, and why, if he has taken it on himself to do this, is he to be reimbursed for the work?

It seems to me that, for ryots without occupancy rights, the more written and registered leases there are the better; but does the provision of section 29, which declares a ryot evicted for breach of an express condition of his lease to be entitled to compensation, seem likely to encourage a landlord to give leases?

Why should a ryot who has not paid his rent, not be it observed an enhanced rent, but what he presumably agreed to pay at some time, be allowed to wrong his landlord by a claim for compensation for imaginary improvements. The provision by which it is proposed to regulate the rates of rent for this class of ryot, viz. that the landlord should pay one year's rental at the rate demanded, to any one unwilling to accept these terms, seems to me likely to cause much ill-will and litigation.

Indeed, the whole chapter seems to me suggestive of chaos. Why should the grounds of enhancement thought reasonable for an occupancy ryot be deliberately scouted in the settlement of rents for ryots of this class? By section 31 the ryot may avail himself of such of these grounds as are applicable to claim an abatement, why should they not also be the guide in enhancement? I cannot but think that it would be better to leave the condition of the ryot without a right of occupancy to be dealt with as a matter of contract. We might point both parties to the table of occupancy rates, and the record of the relation on which these stand to the rates of tenants-at-will in each district. If they can come to a settlement between these limits, well and good; if they cannot it is surely, as I have said before, equally necessary that the Collector should interfere. If this idea is thought unworkable, I would still omit the whole of this chapter and trust to the good sense of landlords and tenants to work out their contracts by themselves, on the basis of the limits put on them on other relations.

The only conceivable good that would to my mind arise out of the chapter is that its provisions would be so obnoxious that landlords would go in wholesale for 'mayadi' pottahs and contract themselves out of it. This would indeed give ryots better titles, but the terms of the leases would I fear be harder than they now get, and even to gain this object it would be necessary first to omit the provision declaring a ryot evicted for breach of an express condition of his lease entitled to compensation, and secondly to make the ejectment of persons holding over easier; on this latter point I shall have something to say further on.

Chapter V, section 33.—It seems to me unfair to treat the tenant-at-will, holding on to his land, and a person let into possession for a term certain, holding on over that term, in the same way. The former may honestly have thought he would be allowed to hold on, and would, if he had known he would be ejected, perhaps have made other arrangements for land; but the mayadi holder must have foreseen his unsettlement long before, and if he holds on over his term without the consent in writing of his landlord, I would give the latter the Collector's assistance any time within two months of expiry of term to summarily eject him.

In *section* 35 I would omit the allusion to the four grounds of enhancement, and I would provide that the notices be served through the civil courts or by registered letter.

I may remark *en passant* that I think much more use might be made of the post office in working this Bill.

Chapter VI, section 36.—I do not understand the omission of the ryot mentioned in section 19, as both his less privileged and more privileged brother are mentioned. To give power to a ryot to build a brick house for himself will be an innovation on the practice of this district, and is of course distasteful to zemindars; but I do not see why a ryot should be prevented from housing himself and his cattle as well as he likes.

Section 39—Would it not be well to fix some time instead of using the words reasonable and considerable?

Section 42.—Will the land of a ryot which, under the last clause of section 40, comes to be considered as let for building, be liable to enhancement under this section as worded? I fancy not, as section 41 is especially quoted; if not, I would alter the section so as to effect this. Such a provision would, I believe, remove much of the opposition to this chapter.

Chapter VIII, section 47.—I do not see why any fee should be levied for registration of succession or transfer in the case of an occupancy holding.

Section 48*c*.—I would fix the time for notice.

Section 52—This appears to me too weak a provision to compel the landlord to do his duty in the matter of registration. I would give the remedy before the Collector, not before the civil court, and would make it a fine not exceeding ten times the amount of rent for which a receipt may be given in the wrong name, or a fine of Rs. 5 a day for refusal to give receipt or register.

Chapter IX.—The instalments proposed in section 55 will suit this district.

Section 57.—I would declare that the description of the holding given in the receipt shall be binding as against the landlord, but not as against the ryot. A case was recently decided, in which the High Court discarded the description of a holding as mukarrari, because it was not shown that the gomasta had authority from his principal to so describe it.

Section 58*d*.—The term should, I think, be at least double that mentioned.

Section 58*c*.—Who is to be the judge of the tenant's *bona fides*. To receive deposits on this ground without some check would be to flood the treasury with petty transactions. Might not a provision be inserted to the effect that the question of *bona fides* be decided on a petition to the Collector presented by not less than twenty ryots of the property about which the doubt is entertained.

Section 59.—Here, again, the decision of as to whether the deposit is within ten days of tender would be troublesome. Would it not be sufficient to fix fifteen days from the date on which such rent fell due? How, again, is the treasury officer to know that the money tendered is really due for the kist mentioned. Would it not be well to insist on the previous kist's receipt being filed with the application? It would be easier to test this than the "Solemn declaration of Form A."

Section 64.—I would give the Lieutenant-Governor the power to suspend, at his discretion, in years of scarcity, this provision, compelling resort to sale in the first instance. If the ryots' power of borrowing is limited by a prohibition of mortgage, he will come poorly out of hard times if this provision stands as it is. In connection with this question of hypothecation, I note that the abolition of the power of distraint is an unmixed good. This it is true is an innovation, but it is one which was absolutely necessary in the interests of the ryot, and the real provisions of the present Act were not really worked.

Chapter X, section 65.—It is justly pointed out that it is hard on co-parceners, and indeed it will be harassing to the Judge, that a single person should have the power of moving him to appoint a manager. Might not the action on the ground of injury to private rights be made contingent on the application of some fixed proportion of the persons interested.

Chapter XI, sections 71 (2) *and* 72.—This penalty will be as inoperative as that of the old Act, unless jurisdiction in section 87 is given to the revenue court.

Section 73.—There is no penalty attached.

Section 77.—The proviso to this is an innovation, especially as the power is given to even tenants-at-will. I have already remarked that chapter IV, if made law, practically invites a man now in the position of a tenant-at-will to do acts which, as law and custom now stand, he would not think of doing. The claim to compensation on account of them will give him a grip on the land. It is fair enough that he should be allowed to build himself a house, or to do the acts specified in clauses *c* and *d* of section 29. His right to do this is now recognized; but to give him the powers of clauses *b* and *f* seems to me an innovation on existing law and custom, for which there is no necessity. The right of the zemindar to control the making of tanks is so fully recognized now that tanks are generally dug on lakhiraj land. Then, I deny altogether that the digging of tanks requires to be encouraged. Bengali villages would be healthier with half the tanks which now exist, and the class of excavation which this provision will encourage is an unmixed nuisance from a sanitary point of view, for the man to whom it is proposed to give the power has not the substance to enable him to make a good job of it.

As to wells, no zemindar would ever think of preventing a ryot from digging a well as things now are, though leave is asked first, as it is an undoubted improvement, and takes up but little land. The provision therefore as regards wells is unnecessary.

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Then as to trees. I deny, again, that the planting of them is always an improvement, except in the neighbourhood of towns where fruit ordinarily sells high. In this district it is not an improvement except on high, barren lands; no tenant-at-will would now think of planting trees without his zemindar's leave, and when a tree is cut, the right of the zemindar to a fourth is recognized. Why indeed should it not be, for he has actually a share in all other produce of land; but this Bill would let any ryot of three years' standing plant trees without leave, and would not only take away this one-fourth share, but would compel the landlord, if he evicted, to give compensation even to ryots of less than three years' standing.

My objection to provisions of this kind is this:—There is no doubt that some crying evils have to be remedied in the interests of either zemindar or ryot. The opportunity which the correction of these offers seems to be likely to be used to dock a lot of little privileges of the landlord which cause no trouble now, and the curtailment of which challenges a doubt as to the spirit in which the larger and really necessary changes are being made. As regards some of these little changes, a landlord will doubtless be able to contract so as to defeat them; but is the ryot benefited by this, or is the zemindar any more well disposed to either Government or the ryot thereby?

Section 77b.—I have already explained the custom of the district in this respect.

Section 78.—Is this notice intended to be personal? If so, the provision would be unnecessary and troublesome. In the case of large landlords, general notice at the mal cutcherry and proclaimed by beat of drum would be sufficient. As regards landlords having no mal cutchery in the village, *e.g* a small tenureholder, written notices might be prescribed.

Section 79 (4).—I would alter the word "neighbourhood" to "his ordinary residence." A man may move from his house to the adjoining village, and yet practically have vacated the land.

Section 79 (7).—I have already expressed my opinion that some more summary procedure seems necessary to prevent holding over in a ryot inducted for a term certain than this section offers. Unless the ryot gets his landlord's consent in writing to hold on a month before the term expires, I would let the landlord file the kabulyat *directly* before the Collector and claim ejectment, which should follow, unless on notice given the lessee can justify his holding over.

Section 79 (9) *and No.* 16 *of Schedule III.*—I would make the period run from date of sale, not from date of knowledge of existence.

Section 80—Seems to me a most necessary provision; but I would not give the landlord the alternative of taking the crop at a valuation. When this stage of affairs has been reached, the ryot will fare but poorly if recourse has again to be had to the court to value the crop. In these cases the ryot only suffers by the delay, and the crop may be spoiling on the ground while the two are waiting for a court's decision, and the ryot has most at stake.

Chapter XIII, sections 87-89.—I have already expressed an opinion that the forum in these cases should be the revenue court: a complaint strains facts too often now to try and bring oppression of this kind within the Penal Code. It would be an excellent thing if in these cases one might elect to take up the charge under one of these sections as Collector or Deputy Collector. The penalty in sections 87 and 88 seems to me far too low. The abwab demanded is often so low that double the amount would not equal the cost of instituting a complaint, but it is a grievance and a danger to the ryot notwithstanding, and the sum of such exactions from a whole village represents an amount of oppression for which a landlord is but lightly punished by a fine of perhaps one-fifteenth of what he has realized.

Chapter XV.—I have already made some comments on the enhancement procedure, and discussed the proposals generally. I note a few points in which the sections as worded seem to require correction. Mr. Dampier's proposed modification of section 95 would, I believe, meet the wishes of both zemindars and ryots, and would assuredly save Government from much inconvenience.

Section 101*b.*—One month is too short a time. If the month fell in the busy time of the year, and often I fear the zemindar would deliberately choose this, much inconvenience and loss might be caused to ryots by having to attend to such a notice. Why not say within such time, not exceeding three months, as to the Collector may appear reasonable. He could then regulate the time according to season and the size of the estate.

Section 103.—I do not see why the Commissioner and the Board need be troubled even to receive and file the table of rates where it is acquiesced in by both parties, but I would give an appeal, where the number of ryots or the area affected was large, to the Commissioner, and from him, in some cases, to the Board.

Section 105.—Why not let the ten years run from date of final order. This period is taken in section 108, and in very large estates the period that would elapse between service of notice, under section 102, and the final order would be considerable.

Section 107.—If this copy of the enhanced jummabandi is to include only those ryots in whom the zemindar admits a right of occupancy, I would certainly let ryots claim to be included in it. The notice of section 102*b* might state that ryots not entered in the copy but who can prove their right of occupancy may, within one month, claim to be included.

Section 108.—See my objection against 101*b* and 112*a*.

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Section 112.—The settlement jummabundi will, I observe, deal with all ryots on the estate, not, like the enhanced jummabundi and the table of rates, with occupancy ryots *only*. This will be satisfactory. I observe, however, that in section 131 the Collector is directed only to exercise the same powers as if an application had been made to him under section 99, and the application alluded to therein may be, under section 100, either for a table of rates, an enhanced jummabundi, or a settlement jummabundi. The two first have reference only to rights of occupancy, but, as I have pointed out, the dispute which would justify action under section 131 need not be confined only to this class of ryots. Would it not be well to declare explicitly in section 131 that a Collector may proceed as if an application had been made to him under section 99, and prepare a table of rates, an enhanced jummabundi, or a settlement jummabundi for any or all of the classes of ryots on the estate other than those holding under registered leases for a term certain.

Section 124.—Sections 87-89 should be added if the argument offered on those sections is accepted.

Section 136.—I would insert after the words 'on account of the rent' the words "and expenses connected with the application." There is often a disagreement as to the recovery of this.

Section 144*e*.—The mention of the police seems to me unnecessary. Let it be declared that the Collector's proclamation shall be held by all courts as ousting for good and all the late incumbent or his tenants, and as giving and retaining in actual possession the auction purchaser. If this is done the Criminal Procedure and Penal Codes can do the rest.

I have little to say on chapter XVIII. I think a certain time should be fixed which must elapse between service of summons and hearing, say ten days. A provision to this effect might be inserted in section 188 (3), *e.g.* "on the demand of defendant when less than ten days has elapsed since service of summons, or on the demand of either party requiring for sufficient reasons," &c.

Section 220.—I would raise the amount to Rs. 25.

Schedule III—I would make the term of limitation against 5, 6, 7, and 8 three months, and against 15 six months.

J E. S.—Reg. No 10695J—182—20-1-81.

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No. 400G, dated Burdwan, the 5th October 1880.

From—C. C. Stevens, Esq., Officiating Collector of Burdwan,

To—The Commissioner of the Burdwan Division

In compliance with your circular No. 28T, dated the 6th ultimo, I have the honour to submit a report on the Rent Bill.

2. It is unnecessary for me to discuss at length either the history of the legislation on the subject of rent or the principles on which our present action should be founded. Both these topics have been very fully and ably dealt with by different members of the Commission, and it will be almost sufficient for me to say that the notes of Messrs. O'Kinealy and Mackenzie have confirmed me in the opinions which I have long held It is in my view unjust to ignore, as the zemindars seem to desire, the true history and meaning of the permanent settlement, and on the other hand it is impracticable for us to confine ourselves to such consideration. The only pretext on which the permanent settlement can be maintained is that the interests of the ryots shall be jealously guarded, and our object should be to work as far as possible in the spirit of the permanent settlement while avoiding all unnecessary disturbance of existing relations.

3. *Chapter I.*—The necessity for drawing a clearly defined line between tenureholders and ryots is so plainly shown by the Commissioners as to require no further discussion. The only question for consideration is on what principle the line is to be drawn. And here, again, I think the Commissioners have conclusively shown that the best guide will be the area held. No arbitrary distinction (such as this must necessarily be) can be free from objection, and we must not expect to find one so clearly and sharply defined as to commend itself to all. The general opinion of those whom I have consulted appears to be that the limit of 100 bighas suggested by the commission is too low, and it is thought that 200 or 250 bighas might with advantage be adopted instead. I think, however, with the Commissioners that the true conception of a "ryot" is that he is an actual cultivator either directly or indirectly, and therefore that the best standard to be adopted is the quantity of land which can be cultivated by a single tenant with such means and assistance as are usual in the country. For my own part therefore I prefer the limit of 100 bighas. Those who deem this limit too low are of opinion that its adoption would have the effect of making the zemindars unwilling to grant reclaiming leases of more than 100 bighas, while on the other hand it would not be worth a tenant's while to take smaller quantities. I doubt both of these statements myself

4. One or two points of some importance have been suggested to me by the Deputy Collector of Culna, who, I may here mention, has submitted a sensible report. He says: "I think the minimum should be raised to 200 bighas at least. The Hindu law of inheritance will operate in the course of a generation or two to reduce the lands comprised in a tenure or undertenure in the actual occupation of a co-sharer to something like the size of an ordinary ryot's holding, though he will possess rights which are denied to the latter or even to the occupancy ryot." This is true and deserves consideration; but I think that the difficulty must be solved by saying that when a holding has once been considered a tenure or undertenure by reason of its size, the portions into which it may be subdivided must retain the quality of "tenure" or "undertenure." The Deputy Collector goes on to say as follows:—"Then, again, the term 'by one demise' will be a fruitful source of litigation. A substantial ryot, as a matter of fact, gets his 'jumma' or the lands included in his holding gradually increased, so that in the course of some 50 years or more, he or his representative becomes possessed of more than 100 bighas. Though he will not be entitled to the privileges of a tenureholder or undertenure-holder, he will not be prevented from claiming them, and if he does so, it would not be always easy for a new zemindar to contest them, because in this country estates frequently change hands, and a new proprietor may not have all the papers connected with the estate so as to be able to trace the origin of the holding. When an undertenure holder therefore claims such rights, he should be required to prove by documentary evidence that he got the lands by a single demise, for it would be very hard to the zemindar if the burden of proof were laid upon him." As I understand the Bill, the burden of proof would lie on the tenant claiming the right.

5. The only gentleman consulted by me who has discussed the question of limitation of enhancements of rents of tenures or undertenures is the manager of the Chuckdighee estate. He is opposed to the limitation of 30 per cent. in section 9 of the Bill, as he says that in the eastern districts there are many tenures which pay some Rs 10 or Rs. 12 to the zemindar, but yield as many hundreds to the tenureholder. The tenureholder may be the original holder, or he may be a purchaser who has paid a fair price for the tenure. The manager thinks that the limit of enhancement should not be uniform in all districts; he believes that local enquiries aided by the road cess returns would enable us to ascertain without difficulty the average profits of undertenures in each district, and then different limits might be fixed for groups of districts. I do not myself think that the Deputy Collector's objection to the limit is borne out by his example, since, under section 10, the

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rent of the tenure could not be increased more rapidly than by being doubled every 10 years; this provision would sufficiently protect the interests of a person who has purchased at a fair price since it would be 60 or 70 years before the limitation of section 9 would begin to operate. The objection generally raised to the 30 per cent. limit is that it is too high; it is not, however, proposed that every tenureholder shall be allowed 30 per cent on his net collections, but that this shall be the highest limit of profit allowed him in cases in which the limitation of section 10 does not operate in restriction of enhancement. I see no necessity whatever for reducing the maximum to 20 per cent; rather than do this, I would remove the limit altogether. The retention of 30 per cent, however, would be desirable as a guide to the courts in fixing a fair and equitable rent. I think the limitation of section 10 is reasonable, and I do not see that it was the occasion of any controversy among the members of the Commission.

6. The Chuckdighee manager also objects to the limit laid down in section 12, for he says that "in the case of tenures and undertenures of long standing it will be difficult to get satisfactory evidence as to what portion of the lands remained unreclaimed at the time the demise was made, as also the object of such demise. In the absence of any written contract between the parties (which I think is the case with the majority of old tenures and undertenures), this enquiry will be the more difficult. The provisions of this section will, I believe, be the cause of much useless litigation between the landlord and tenant." It seems to me that as the privilege of the limitation would be that of the tenant, the burden of proof would lie on him, and that in cases in which he might be unable to sustain it, the privilege would not be attainable. I imagine that this question would come before the courts only as being raised in defence against an enhancement suit; this being so, I doubt whether there would be any increase of litigation. The provision seems to me fair and reasonable, and the fact that it may be occasionally improperly claimed appears no sufficient reason why it should not be made law.

7. A question which seems to me likely to arise with reference to tenures or undertenures under section 11 is the effect which change of area of the holding should have. The area might alter in the course of the 12 years by alluvion or diluvion, or in other ways, and questions of some difficulty might arise if not provided for. Perhaps, the safest course would be to provide that when the original demise is upwards of 100 bigahs, the effect of diluvion, acquisition of land for public purposes, &c., should not operate to alter the nature of the holding, provided the full amount is paid, or the landlord has received compensation.

8. *Chapter II, section* 17.—The exception to this section seems to me reasonable and proper.

9. *Chapters III and IV.*—All those gentlemen who have favoured me with their views are unanimous in objecting to chapter IV of the Bill. Some object on the ground that it is an infringement of the zemindar's rights to allow tenants of three years to obtain any rights on their holdings; others say that it will work very badly in practice. With these latter I concur. It is urged that the rights proposed to be given to them (three years' tenants) are really more valuable than the full rights of occupancy; that zemindars will do their utmost to prevent ryots from becoming qualified to possess them; that it will be easy for ryots to collude with recently-dismissed or with dishonest servants and obtain proofs of three years' tenancy, and that, all things considered, it will be bad for both parties. The zemindars would rather give rights of occupancy at once to all ryots holding for three years. I entirely agree with the views expressed in paragraphs 8 to 11 (inclusive) of Mr. Mackenzie's remarks dated 23rd May and printed in pages 111 to 113 of the first volume of the report, and I would sweep away chapter IV entirely and give rights of occupancy to all ryots who have held their lands for three years. The zemindar has not a right to more than fair and equitable rents, nor has an occupancy ryot any right to expect to pay less than these; and if the institution of a system of pergunnah rates be adopted, I see no reason to think it an unjust measure to protect from arbitrary ejectment ryots who have shown their intention to settle on the land. This is one of the points in which it is right and proper to revert to the spirit of the permanent settlement.

10. *Section* 19, *explanation* 3, *clause a.*—Opinions appear to be divided on the question whether rights of occupancy should be acquired by persons holding immediately under a mukarraridar or istemraridar. The Deputy Collector of Culna says that "this provision is strongly objected to by istemraridars and mukarraridars on the ground that, in the case of small mukarrari or istemrari tenures it will work injuriously to their owners, as their income will be ultimately reduced, they being debarred from the ordinary way of enhancing the rents of their korfa tenants. This objection, however, does not hold good in the case of larger tenureholders of the above class." I do not, however, see any reason why istemraridars or mukarraridars holding tenures of whatever size should be debarred from enhancing up to a fair and equitable rate, and I see no valid objection to the proposed law.

11. *Section* 19, *explanation* 3, *clause c.*—The general opinion seems to be opposed to the enactment of this clause, and I concur in thinking that it will be better practically to treat tenants of persons with rights of occupany as mere tenants-at-will. Such seems to be their present position generally, and it would be difficult to change it. As a rule the position

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of "korfa" tenants is little, if at all, above that of day labourers, and I suspect that their relations with those of whom they hold usually arise out of mere temporary convenience to both parties.

12. *Section* 19, *explanation* 4, *clause h.*—I strongly object to allow a ryot to contract himself out of a right of occupancy, since the contracting parties are by no means on equal terms, and it does not appear to me right that public policy should be overridden by private contracts entered into under such circumstances. The opinions differ, however, on this point, and the clause as proposed has its supporters, since prohibition to contract out of a right of occupancy is thought to be an infringement of the right of property. But this argument rests on the important assumption that it *is* one of the rights of property to prevent the accrual of occupancy rights. It seems to me that this assumption is not altogether warranted. In my view this is an important matter of principle on which a compromise is scarcely possible.

13. *Section* 20.—I believe there is little or no difference of opinion as to the propriety of making an occupancy holding transferable by inheritance, by private sale and gift, and by sale in execution of a decree for arrears of rent. So far as my experience has extended, holdings of this kind are transferred freely, and the proposed legislation would, to this extent, be advantageous to both landlord and tenant by confirming the custom which is not universal is at least widely spread. The two points which are open to discussion are whether or not these holdings should be transferable by sale in execution of decree other than for arrears of rent or by mortgage. I think it will be admitted by those who wish to prohibit such methods of dealing with occupancy rights that they are in vogue now, and it would be impossible to make existing contracts void. I perceive that the Commissioners were unanimous in holding that mortgages should be forbidden; but I find the majority of the gentlemen consulted by me to be in favour of retaining the existing practice. There is no doubt great force in the arguments of the Commissioners; but, on the other land, it may be said that the ryot may have occasion to borrow money for proper and justifiable reasons, such, for instance, as the support of his family in times of pressure or scarcity. Now, the ryot's holding is his chief if not his only property, and if he is to borrow, it is the only security which he can offer. It seems obvious that he will be able to obtain money on this security at a cheaper rate, and that he will have less difficulty in obtaining the necessary loan than if the mohajun had only the ryot's mere promise to pay. The result of refusing to allow the ryot the power of mortgaging his right will be to force him to sell, in cases of emergency, and if the emergency arise from famine or some other cause of general operation, the ryot will have to sell, just as all around him are being compelled to take a similar course, and there will be no one to buy. The prohibition to mortgage will, in fact to some extent, diminish the value of the ryot's holding The Government pleader suggests that the ryot might be protected by a clause that the mohajun is not to bid at the sale in execution of the decree, or that none but a ryot can bid. I fear, however, that these provisions would be easily evaded. Two suggestions have occurred to me on this point; would it be possible to allow sales to recover only the principal lent and not interest, or would it be possible to allow mortgage only for the benefit of the ryot or his family? The objection to both these courses is that they tend to complicate, when we wish to simplify. Upon the whole, I am inclined to think that the present practice by which occupancy tenures are mortgaged and sold in execution of decrees should be permitted. With reference to the sale of occupancy rights in execution of decree, the following point noticed by the Government pleader deserves attention. "I think it necessary," he says, "to note here that there is another class of men who will be subjected to loss and trouble if this restriction were allowed to stand. The holdings of ryots are not unfrequently split up into several parts with joint liability to pay the zemindar's dues. One ryot is frequently required to deposit the rent payable by his co-sharers to protect his own share from sale. He can only recover the money thus advanced by a suit for contribution The decree will be a civil court decree, and according to the Bill not enforcible against the jumma. Now, the plaintiff in a case of this sort is not a professional money-lender; he felt constrained to advance his money for the preservation of his own interest. There appears, to my mind, no good reason for depriving him of his money."

14. *Section* 20, *clause e.*—Opinions are divided as to the propriety or otherwise of allowing ejectment under any circumstances. I am disposed to think it should be permitted (if at all) only where the landlord is actually endamaged, or the security for his rent impaired.

15. *Section* 21.—No objection to this section has been raised by any one whom I have consulted, though it is certain that rents in kind exceeding the limit of 50 per cent are not unfrequently paid. If we were settling the law for the first time, I should place a lower limit than 50 per cent on the rent; but we must pay some regard to existing facts. I think the section should stand.

16. *Sections* 22 *and* 23.—I have carefully studied the proposed law with the Commissioners' report and am of opinion that it should be passed. I have received no objections to it of any weight or importance, and the rule of taking one-fourth of the gross produce as the limit of the occupancy ryot's rent, seems to meet with general acquiescence. I approve of giving power to enhance progressively, and also of limiting the increment to 100 per cent at one bound. The provision for deducting road cess paid by a ryot from the enhanced

rent under the fourth ground is fair and reasonable, and the objections which have been raised are based on misconception.

17. *Chapter VI.*—The provisions of this chapter generally meet with approval, but it is thought that 5 per cent on the market value of the land is too low a rate for bastu land. Perhaps it would be better to leave the exact rate to be included in the Collector's table of rates.

18. *Chapter VII.*—The provisions of this chapter appear to be free from objection, except that perhaps the term of three months allowed by section 43, clause *b*, should be extended in the case of persons who may be owners of the estate and the tenure at the time of the passing of the Act. In their case the deed should be registered within three months from the passing of the Act.

19. *Chapter VIII.*—Speaking generally, I think the system proposed in this chapter is suitable and proper, but there are some points which are open to discussion. The Government pleader says as follows:—"Sections 46 and 51, if allowed to stand in their present form, will, I apprehend, cause great annoyance and loss to the tenants in general. The time allowed in section 46 for registration is three months from the date of succession or transfer. Considering that most Hindus have to spend a month in mourning and some time more in the celebration of the sradh, the time allowed is very short. I would suggest six months in lieu of three for effecting registration. I beg further to draw your attention to the forfeiture clause in section 51. It seems a very hard measure, and in the hands of an unscrupulous landlord may prove an engine of oppression. Registration of a tenure or holding has no doubt its importance, but the penalty of forfeiture provided for default is, in my opinion, very objectionable. I have nothing to say against the *first* part of section 51. The provision made for attachment, coupled with a clause authorizing the landlord to appropriate the profits of the holding to his own use during the continuance of the attachment, may be deemed sufficient punishment for neglect to register in the zemindar's sherista the change of ownership in the holding. If this be deemed inadequate, and the forfeiture clause be considered the only effectual remedy for curbing the spirit of refractory tenants, I would suggest an extension of time in favour of the ryots on this head also. The ryot ought to have three years in lieu of one provided for in this Bill. In connection with this, I beg to observe that widows having no male relations and orphans will, I am afraid, be made victims of the rapacity of unscrupulous landlords, unless some provision is made to ensure their safety from the law of forfeiture. The registration in the talookdar's sherista means nothing more than mutation of names in the 'lowajima' papers, viz. 'thoka' and 'jumma-wasil-baki.' We all know what these papers are, and how easily these can be manufactured for the purposes of a case. According to section 51, if a person does not effect mutation of names in the zemindar's sherista within the year next ensuing after the one in which the holding devolves on him, he will be at the entire disposal of the talookdar. Now, if the landlord after receiving the prescribed fee were to wait for sometime and then claim the jumma as forfeited, the tenant will have nothing worth the name to oppose the claim. I would therefore suggest, if the law for forfeiture, as provided for in the Bill, is allowed to remain, that no forfeitures be allowed without an order of court in that behalf, and even then to allow the tenant a month's time to register his name from the date of the order." Baboo Girish Chunder Sein writes regarding section 51: "The penalty of forfeiture of the holding for omission to apply for registration before the expiry of the year next ensuing after such succession or transfer is *too severe*, and should be altogether omitted from the law. Some other penalty, say 50 per cent of the amount of one year's rent, together with any compensation for any loss sustained by the landlord being substituted, and in default of payment of such penalty, the forfeiture of the holding may be allowed. This section, as it now stands, if enacted, will give the landlord a new handle of oppression There are such petty dishonest landlords who will accept the fee of registration and say to the ryot that the transfer of his holding has been admitted and registered without doing anything at all. The ryots are mostly illiterate, and the landlord will continue to give the receipts in the name of the person who stood formerly in his book, or it may be, in case the landlord admitted the registration of the transfer, he will deny giving receipts in the name of the transferrer, and afterwards, when there is a grudge, the landlord will declare his absolute disposal over the holding of such ryot. In short, this section gives the landlord the power of ejecting the holdings of such ryots who are poor and illiterate." I have made these quotations at length because I attach much weight to the considerations which they contain. The Government pleader's note generally is somewhat hostile to the Bill as too favourable to the ryots, and his observations on the subject of registration are all the more worthy of attention. I approve the alterations which he would make in the Bill, and as an additional safeguard, I would *require* the landlord to give, as a matter of course, on the occasion of the registration, a copy of the entry free of expense, and I would attach to neglect or refusal to do this a penalty say ten times the fees payable on the transfer. Again, I would hold that giving a receipt in the name of a former holder of the tenure, instead of the transferree, should be considered as withholding a receipt. This provision might be inserted in section 57, clauses *a* and *b*. I think it would be better instead of fixing the fees at 2 per cent to fix them at so many pice in the rupee, say 2 pice in the rupee up to Rs. 100, and 1 pice per rupee for all in excess of that amount. This mode of calculation would perhaps be more intelligible to the people who would be chiefly

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interested. I am informed that the fee usual at present for transferring a holding is one-fourth of the annual value, and my informant considers it probable that the landlord will try to continue to realize this excessive fine. It might be well to lay down a penalty for excessive exaction of registration fees.

20. *Chapter IX.*—I entirely approve the provision to reduce the number of kists to four.

21. *Section* 57.—The receipt as well as the statement of account should also specify the person in whose name the holding stands in the landlord's books.

22. *Section* 58.—It is doubtful how far it is desirable to retain the provision of a previous tender to the landlord. It is perhaps not going too far to say that the money deposited is as a fact *never* tendered in the first place to the landlord, and it may be alleged with truth that every deposit made involves a false statement on the part of the ryot. This would continue under the new law, and in cases of disputes involving any considerable number of persons, the ryots would readily be false witnesses for each other. Would there be any objection to the depositor merely declaring the reason why he wishes to deposit his rent, and to the officer receiving the deposit having discretionary power in case of insufficient reasons to call upon the depositor to pay the whole or part of the costs of serving notice on the zemindar, or to refuse the deposit altogether. It is not easy to find a satisfactory solution of this difficulty, but I think it very desirable that the present system of false declaration should be terminated.

23. *Section* 59.—I think that in any case the deposit should be made within 15 days from the date on which the instalment fell due.

24. *Sections* 62 *and* 63.—No remark is made on these sections by any of the gentlemen consulted by me. I therefore presume that the proposed rules are deemed free from objection. For my own part I entirely concur in the view expressed in paragraphs 107 and 128 of the Commissioners' report.

25. *Section* 64.—Two of the gentlemen who have given me written opinions would prefer Mr. Field's original draft; but the moonsif and Government pleader, who have just been with me, have given me strong reasons against it. They say that decree-holders would be afraid to bring holdings to sale lest they should prove to be merely working to recover the landlord's rents for him. This would ultimately diminish the value of the property. The Government pleader suggests, too, that Mr. Field's rule presumes that the landlord is owner of the soil, while it is quite possible that he may not be so. He thinks that the sale should take place subject to the landlord's lien, and this, I think, is right and fair to the landlord. If there be no provision of this kind, it would seem to be possible, by means of collusive decrees, to deprive the landlord of all the benefits of the hypothecation of the tenure.

26. *Chapter X.*—The manager of the Chuckdighee estate approves this chapter generally, but does not consider the relief given to a coparcener who has to contend against collusion between the other coparceners and the tenants to be sufficient. He says (and probably correctly), that a poor coparcener is often put to great inconvenience in this way. His suggestion is that on collusion being proved special damages might be awarded, payable at the discretion of the court by one or both of the colluding parties. This would be practicable perhaps, but it must be remembered that the law would be in the hands of the rich as well as of the poor coparcener, and I am not free from apprehension lest an unscrupulous rich partner might not find in it a weapon of destruction. The subject generally is discussed by the sub-divisional officer of Culna in the following terms:—"The appointment," he says, "of a common manager in an undivided estate or tenure is looked upon with disfavour by those affected on the following grounds":—

"That an individual coparcener will not be able to compel the manager to take steps for the protection of his interests if a majority of the coparceners combine against him and side with the manager.

"That the manager will be practically without any effective control in the performance of his duties, the provisions of section 67 notwithstanding.

"That in small estates the coparceners can collect their rents separately without employing any paid agency for the purpose, and that the appointment of a manager will entail unnecessary expenses on them. The remedy suggested by them is that the legislature should provide for a less expensive and more summary procedure for the partition of estates in the possession of many coparceners. It must be admitted at the same time that, for reasons explained in paragraphs 134 to 137 of the select committee's report, the appointment of a common manager will remove some of the evils from which the ryots suffer at present. The zemindars urge that the coparceners should have the right of measuring the lands comprised in an undivided estate without the assistance of the civil courts, for, if this right were withheld, the purchaser of a share in an estate or tenure at an auction sale will be unable to ascertain the quantity of land to the rent of which he is entitled, nor will he have any remedy if he finds a ryot gradually encroaching on waste lands. He will also be unable to give a full description of the lands in executing a decree if the other coparceners combine to withhold all measurement papers from him.

"If the assistance of the civil court is sought in the first instance under section 63 of the Bill, he will be placed at a disadvantage, as is evident from the general unwillingness

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of the people to resort to the civil courts first for having their rights established Under the Bill, he who brings the holding of a ryot to sale first will be the gainer, and the rest losers. A remedy can be provided by allowing part of a holding or tenure to be sold for arrears of rent corresponding with the share of the coparcener, and subject to the arrears of rent due to the other coparceners. Something ought also to be done, they say, to enable a coparcener to sue for enhancement of rent on account of his share of the estate without making the other sharers coplaintiffs, where he has grounds for believing that they will rather side with the ryot to injure his interest. If an individual coparcener brings a suit for enhancement, and the others do not join with him after service of notice, then they should be debarred from bringing an enhancement suit for the next ten years, or they should be required to pay the costs of the defendants in such suits if brought within ten years."

Mr. Casperz fears that the proposal to let a ryot move the civil court is placing a mischievous power in his hands, and would allow the Collector alone to do so. I do not myself agree with any of these criticisms, but I have mentioned them as the subject is very important and to some extent novel, and it is desirable that objections shall be heard. As I take it, we are not to expect that the management of coparcenery estates will be generally taken up by the civil courts. In the first place a very large number of cases will fall under the exceptions to section 69. There will be very many cases in which the partners will quietly manage these affairs in combination; there will be many in which the Judge's notice will have all the requisite effect, and it will be in but a small residue of instances that the full action authorized by the Act will become necessary. The provisions of the Bill are not intended to be used for the pleasure or convenience of the coparceners, but for the protection of the public interests or of the interests of the innocent sufferers. The effect of the provisions of the Bill will be to force disputes to a head and thus cut short litigation, and often prevent something like the demoralization of the ryots. It is not impossible that this law may be worked as a means of obtaining possession. Perhaps it is not necessary to define the term coparcener; but I think it would be well to lay down clearly that only a coparcener in possession, or whose right to be in possession is admitted, is at liberty either to move the civil court or to show cause. I do not think it necessary that the court of wards should have to deal with work of this kind, except, perhaps, very rarely. I would distinctly provide that all expenses connected with the management or supervision of the management, or in cases in which these expenses cannot be exactly ascertained, suitable fees should be levied. If the District Judge should refuse to act on the Collector's application, what should be the remedy? Should there be an appeal? I am a little doubtful whether the High Court would be a perfectly suitable tribunal for the decision of such cases. I need only mention one cause, and that is the delay which might very possibly be looked for in keenly contested cases, those in fact in which the application of the Act would be most desirable.

27. *Chapter XI, section* 77.—I am not quite satisfied that a ryot should have the power without the landlord's consent of digging a tank or of entering into drainage schemes. Such works may affect other lands besides the ryot's own, and possibly the benefit, if he derives any, will be attained at the expense of some neighbour. Moreover, works of this nature, if unintelligently undertaken, may materially injure instead of improving. I think that the landlord should be allowed to object to these improvements on the ground that they would injure other property belonging to the landlord or his tenants, or that they would endanger the rent of the land itself. The landlord should not, however, be allowed to demand salamis for granting permission. I regret to say that I have no local information bearing on this point. Objections are raised to section 77 (*b*) on the ground that it places it in the power of the ryot to plant large gardens, crowding the trees, and then to cut them down and sell them, leaving his tenure to be sold by auction for its arrears and abandoning the land in a state unfit for cultivation. I think that the landlord ought to have some protection against a trick of this sort. It is quite possible that a speculator may buy a plantation of this sort, cut and appropriate the trees, and abandon the holding, leaving the roots to embarrass the next cultivator, and consequently to injure the landlord's chance of realizing his rents. So far as I know, this proposal gives a ryot a privilege which he does not possess at present. I think that the ryot ought to be bound to put the land into proper condition before leaving it, and that in the event of his not doing this should pay compensation. A suggestion has been made to me that a ryot should be allowed to cut down trees other than fruit trees, but not fruit trees. I question, however, whether this would be very much of an improvement.

28. *Section* 79, *clause* 3.—The Chuckdighee manager states that in his experience "much misunderstanding, resulting often in useless litigation harassing both to landlord and tenant, takes place after the relinquishment as to whether the tenant has relinquished all the plots of his holding. I would therefore suggest that in the notice of relinquishment, the ryot should give the boundaries of all the plots comprised in the holding.', He goes on to recommend that mere service of notice without actual vacation of the land should not free the ryot. This suggestion appears worthy of attention.

29. *Section* 79, *clause* 9.—This provision seems free from objection.

30. *Section* 80.—None of the gentlemen consulted by me has noticed this section, except Mr. Casperz, who objects to it. In the instance, however, which he gives, the "ryot"

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is rather a "trespasser" than a ryot. I regret that I have not, and have no chance in the very short time at my disposal of obtaining, local information on this point. What is meant by "a reasonable rent" for the time during which the ryot uses the land? Who is to decide what this reasonable rent is? I think it should be ordered by the court in execution of whose decree the ryot is ejected. Could a ryot, entitled by this section to retain the crops, prosecute a trespasser under section 447 of the Penal Code? This is a case likely to arise, and I think he should have the power. Supposing a ryot holding 50 bighas of land have crops on one only, I presume his right of the ryot to hold on would extend to that one bigha only. In the event of the crops being newly-planted, or being far from maturity, I suppose the relief given to the landlord under the proviso to this section would be sufficient.

31. *Chapter XII.*—I think the safest plan would be to empower the local Government to make sections 84 and 85 applicable to those districts to which they might be deemed suitable. In this part of the world it appears to be unusual to let lands on danabundi tenures except to the lowest classes of ryots. The Chuckdighee manager says that "it is only when the gomasta is unable to let out the lands in money rent that he lets out the land in bhag In some pergunnahs of the district of Midnapore (Mongleghat for instance) large tracts of khamar lands are let out in bhag. The agreement generally is that half of the produce as settled by *koot* or estimate will be the share of the landlord, and the other half of the tenant I do not know whether such practice of letting out lands prevails to any great extent in the eastern districts."

32. *Chapter XV.*—Upon the whole, the provisions of this chapter seem to be generally approved. The abolition of the notice of enhancement does away with a very common source of failure Much is considered to depend, and rightly so, on the officers by whom the law is to be worked. The Government pleader and another pleader, Baboo Ramlal Mookerjee, object to the concurrent jurisdiction given to the civil court and to the Collector. The Government pleader says: "It would have, however, in my humble opinion, been better had we got in its place a simpler procedure. As it is, however, there is not perhaps much reason to complain. I want simply to note that it would be desirable to have the same class of cases tried by the same tribunal. I do not object to the jurisdiction given in such cases to the Collector. What I object to is the concurrent jurisdiction given to the civil and revenue courts in the trial of the same class of suits, as this will likely lead to conflicting rulings." I think that this view is sound. I am sure that the deciding officers would be carefully watched and their views noted by the legal practitioners, and that the Collector or the civil court would be selected as the interests of the plaintiff might seem to suggest. In my opinion the view taken by Mr. Dampier and generally acquiesced in by Mr. Mackenzie is to be preferred to that of the Commissioners as a body; but I am disposed to think that the second alternative course suggested by the Commissioners in paragraph 97 of their report would be the best. I would, however, certainly retain the provisions of section 112 *et seq.* The evils for which these sections are designed to provide a remedy are well and clearly described in paragraph 84 of the report, and are, as Mr. Dampier justly observes "matters of notoriety." Would it be possible in any way to make the outgoing zemindar responsible? I fear it would not in any case; in cases of succession the impossibility is almost obvious.

33. *Chapter XVI*—The Chuckdighee manager suggests that the provisions of this chapter be applied to the sale not only of patnis but of other tenures, undertenures, and occupancy holdings. "Doubts expressed," he says, "by the Commissioners in paragraph 163 of their report as to the advisability of such extension can be removed by adding some strict provisions in the procedure for punishing fraudulent applicants, and by imposing heavy penalties and damages in cases of false and incorrect applications for sale. The reason as to why it is extremely rare to hear even the allegation that a tenure has been brought to summary sale without arrears being *bona fide* due, is only because the sale is made on the sole responsibility of the applicant. Undoubtedly the proprietors of revenue-paying estates are persons of substance, against whom a decree for damages can be effectually enforced; but so also are the proprietors of patni and durpatni tenures. The extent of responsibility of the party at whose instance the sale takes place decreases with the value of property sold. If a patnidar can recover Rs. 5,000 damages from the zemindar, an occupancy holder can easily recover Rs. 500 from his superior landlord." The manager suggests that if any safeguard is required, discretion might be given to Collectors to take security from parties applying for sale. "The reason," he goes on to say "of my urging so much for this extension of the patni sale law to undertenures and occupancy holdings is because the procedure laid down in chapter XVIII for the realization of arrears will, to a very small extent, remedy the prime evil against which the landlords are all along protesting. The other improvements in the old patni law are good; for instance, the provisions in section 138 giving power to undertenure-holders to deposit the amount due into the collectorate treasury, and thereby stop the sale will be very beneficial to the undertenure-holders generally." I have quoted the remarks at length as they merit consideration, though I am not disposed to agree with them. As regards ryoti tenures, I hold a strong opinion that there would be great danger in giving this power of summary sale; there would be less objection to making undertenures of a higher class saleable in this way, and perhaps in their case sufficient safeguards might be devised.

34. *Chapter XVIII.*—The Chuckdighee manager does not consider this procedure sufficiently summary, but thinks that if the right of selling undertenures summarily be not conceded, the ryot, when a *prima facie* case has been made out against him, should deposit the amount of the claim or give security for payment. I do not approve this suggestion. In my opinion the procedure suggested in the Bill is quite as summary as can be safe; indeed, I doubt whether the power of recording an abstract of the evidence is one which should be given to all officers indiscriminately. I think I would give it only to selected officers, or at least officers who are considered fit to use it. I highly approve the provisions of section 190. I think that issues should be fixed. The provisions of section 206 are objected to as complicated and obstructive to the landlord executing his decree; they are open to these objections I think, but it seems advisable to afford protection to the undertenures.

35. I have gone through the schedule of limitation, and have seen nothing in it calling for special remark.

36. The question of the abolition of the present law of distraint is one which calls for brief notice. The zemindari interest is not unnaturally opposed to the abolition of this power on the ground that the landlord is deprived of one method of enforcing his rights. It appears to me, however, that the hypothecation of the tenure for the rent due on it more than counterbalances the injury done by removing the power of distraint. It is admitted that distraint is not resorted to very often, and that when it is resorted to, the proceedings are not always regular and proper. I would therefore abolish the law of distraint.

J. E. S.—Reg. No. 10697J—132—21-1-81.

No. 892G, dated Bankoora, the 10th October 1880.

From—J. ANDERSON, Esq., Collector of Bankoora,

To—The Commissioner of Revenue for the Division of Burdwan.

IN reply to your Circular No. 28T, dated the 6th September last, calling for a report on the draft Bill to consolidate the law of landlord and tenant, I have the honor to report as follows.

2. I took steps at once both to call a general meeting at head-quarters and to have a sub-committee appointed to gather and give opinions on the Bill, and further invited special reports from moonsiffs and deputy collectors.

3. I now propose to take the different proposals as arranged in the Government letter, but before doing so I would submit some general remarks.

4. In the Lower Provinces of Bengal there are three provinces, Bengal, Behar, and Orissa. As regards Orissa, none here has any experience, and there the rent-suits are still disposed of by the Revenue authorities.

5. For Behar some special provisions have been made, and none except myself has probably any experience of the relations of landlord and tenant there, and mine is not recent. The remarks therefore will apply to Bengal alone. However, the need of a Bill like the present requires to be considered, as well as the financial result to Government of passing it.

6. The zemindars wanted a speedier procedure for realizing arrears of rent, and facilities for enhancement of rent The tenantry of Behar are still in a miserable state, and some relief to them is considered advisable.

7. In trying to meet the wishes of the zemindar it was found that it was difficult to deal with their case without revising the whole law.

8 Keeping in view therefore that every new law causes a disturbance of existing relations and a flood of litigation, and that it adds materially to the permanent expenditure of Government with only a temporary recoupment in the shape of stamps, I would suggest that nothing of the existing law, even in phraseology, should be changed without the most undoubted evidence, not only of desirability but of absolute expedience and immediate urgency. The lower classes of tenantry are advancing with great rapidity in education and intelligence, and will sooner or later push aside the annuitant zemindars. The number of perpetual leases yearly registered shows that the real proprietorship of the soil is fast passing into the hands of improving tenants, no doubt at the expense of considerable *salamis*. How far the present Bill will act in regard to curtailing these *salamis* it is easy to see. It is to be considered therefore whether the ryots of Bengal require further support in this direction at present. The zemindars are gradually dwindling away, and the putnidars, talookdars, istemraridars and the like are taking their place. Nothing therefore in the shape of improvement can be expected from the zemindars, who are clogged with tenure-holders under them The State has made a present to them of large incomes in the belief that they would set about improving their lands. They have not done so. Provided therefore faith be kept with them as regards the permanent settlement, we may dismiss them from further consideration

9. The tenure-holders are of various degrees, and all except the lowest permanent ones may be classed in the same category as zemindars. Those, however, lowest in degree who have either fixed or enhanceable rates deserve the most serious consideration, as they constitute the real proprietors of the soil We tried to get the zemindars to improve their lands from 1793 downwards, but in vain. Can we be sure now-a days that these inferior land-holders will do their duty? We have this much in their favour. They have taken in lands on getting a permanent lease and improved the face of the country. They are entitled, therefore, at any rate to greater consideration than the effete zemindar class. Of course, there are exceptions among zemindars, and these will become more numerous among them and the inferior tenure-holders, but as the lands are clogged with under-tenures and rights of occupancy, it is difficult for them to improve their lands. Act X came in to fix us with another set of permanent holders of land below the tenure-holders. It is true these were the supposed khoodkasht and kadeemee ryots of the permanent settlement. It gave to such of the latter as had not secured mourasi rights, a right of occupancy which they had not enjoyed before, it may be from the delay of the Legislature in interfering sooner.

10. Now even these lowest tenure-holders cannot improve their lands as they should like, because of the growth of a set of men under them who cannot be got rid of, except where their holdings are by custom transferable. The present Bill, without giving this lowest degree of tenure-holders an opportunity of improving the land, is trying to provide a remedy from below. It proposes to legislate for the gradual elimination of all tenure-holders and for the development of enhanceable ryots. This notion is no doubt entirely novel, but it is to be remembered that it reverses altogether Western notions of the method of dealing with land for its improvement. There every effort is made to clear it of all rights except temporary ones, and to make it quite free for manipulation for any purpose. Here the system proposed is to develop ever a new series of young proprietors rising as it were out of the soil and pushing upwards into a harmless chamber of annuitants the older ones. Whether the experiment will succeed it will be difficult to say. I fancy, however, we are hardly ready to try it here, until it has been tried in some country of the West.

To my mind our duty is at present clear, viz. not to increase the number of middlemen but to decrease them on any given piece of soil.

11. We are asked to do justice at last to the khoodkasht and kadeemee ryots by having it enacted that, if they reside for three years or more, they shall be practically ineradicable. As the Behar peasantry require some protection from eviction and some security for improving themselves, the provisions of the Bill which would be superfluous or going too far in Bengal might well be tried there.

12. The zemindars wish a speedier means of realizing arrears of rent. They had this cry when the haftum and pancham regulations were enacted. Every day, however, their need of such means is lessening, because the value of the land as compared with its sudder jumma is increasing I therefore think that as they now do not want this Bill the speedier means need not be devised. The undertenure-holders, however, have been in need of such means much more than the the zemindars all along, because they have had not only to pay their own rents but those of their superior tenure-holders in order to save their own tenures from destruction. Yet their cry, if any, has not reached the public ear. There seems no necessity therefore for creating speedier means. Should, however, there be such, it would not, I think, be by means of a special procedure excluding the engines of eliciting truth (as of discovery, &c.), but by giving finality to decisions, and taking security from parties before judgment.

13 The zemindars desire also facilities of enhancement of rent, but the concurrent jurisdiction offered them by the Bill does not seem advantageous to them, clogged as it is at any rate with so many and expensive additions. The enhancement provisions as far as they are concerned therefore can wait a little. The tenure and undertenure-holders, however, have claims, but they have not been sounded as to their grievances on this score. It seems therefore expedient to wait at any rate until their grievances are ascertained. No change in the substantive law of enhancement has been asked by the zemindars, only in the procedure or means for ascertaining the facts from which the rule of proportion as to the rise in the value of produce may be drawn.

14. It may be said that, unless the zemindars get a *quid pro quo*, they will oppose tooth-and-nail the passing of a Bill which is politically expedient in the interests of the agricultural masses. The Legislature as at present constituted is, however, hardly yet a mere creature of compromise of classes.

15. There remains therefore as residue a revision of the whole law for the benefit, pure and simple, of the ryots of Bengal who have not asked for it and who require it admittedly much less than the ryots of Behar. Provided therefore they can be benefited without confiscation of zemindars and tenure-holders' fair rights, and provided that this can be done without a flood of litigation and setting class against class and without expense to Government, I think a *short* but comprehensive measure may be educed from the mass of material offered by the present Bill.

Chapter I.

16. The definition of ryot (paragraph 3 of Government letter and paragraph 10 of the Committee's Report includes subletting, but limits the total of the holding to 100 beeghas. This is approved by the sudder head-quarters sub-committee after discussion as the best solution. On the other hand, the sub-divisional sub-committee object to it. The former do not discuss the fluctuation in the status of the holder from diluvion and alluvion, while the latter do. The Moonsiff of Gungajulghatty, who held a meeting of thirty persons, gives their united opinions representing no doubt as asked both zemindars and ryots which I shall duly note as I proceed. He and his meeting think there is no necessity for defining the distinction more precisely between ryots and tenure-holders. The zemindar of Kuchiakole, Baboo Radha Bullab Singh Deb Bahadur, and the zemindar Baboo Bemolanund Mukerjee also object to the arbitrary limit of 100 beeghas for ryots as adverse to their interests, stating that there are many ryots possessing more than that, on the ground of being an invasion of their and tenure-holders' rights.

17. I concur in the soundness of the objection, and therefore if no better solution can be put forward this one should be abandoned. I would add that the question of arable and waste land, as comprising the holding, has not been considered. In Chittagong a jotedar or noabad talookdar may have 10 beeghas of arable land and 100 of waste.

18. I offered once before, while at Furreedpore, a discussion to show that only the courts could, as a question of fact, determine the status in cases of dispute. For their guidance some rules might be framed to aid them. The question to be decided is: "Is a man substantially a cultivator or a middleman? is he nominally a cultivator and really a middleman, or *vice versa*?" Until it be proved otherwise, he will, if he cultivate directly at all, be held to be a ryot and not a tenure-holder.

19. No definition I still think will fit in with the varied state of facts and yet keep us to the point of actual cultivation as the final test. "A very large number of ryoti holdings" says Baboo Hori Sunker Dutt (Pleader and member of the Bishenpur Sub-Committee) "contain more than 100 beeghas."* Those holdings above 100 beeghas would suffer by the new provisions the loss of advantages which those under 100 beeghas would retain, viz. the avoidance of their tenures by wilful default of payment of rent of their superior holder, and the limit of enhancement of rent, without any corresponding advantages, and this would act as a strong repression of improvement in the world of

ryots, and incentive to subletting which should be discouraged, in my opinion, throughout the Bill, as already excessive in this country.

20. The effect of the limitations placed on the Bill (paragragh 4 of Government letter) on the enhancement of the rent of tenures and under-tenures generally is discussed by both sub-committees, and the sudder one suggests that, for the portion of land cultivated by the tenure holder, "a reasonable rent" should be limited by a maximum of one-fourth of the average annual produce as in the case of ryots of occupancy. If, however, ryots are to be induced to become tenure-holders, which is against the policy of the Bill; this maximum should be lowered a little.

21. The sub-divisional sub-committee recommended an amendment that there should be a minimum limit of profit secured to the tenure-holder amounting to 10 per cent. of the average annual produce. In this I concur, as whatever the policy of discouragement of middlemen may be, it cannot be allowed to become open confiscation of a tenure by a superior holder on any ground of enhancement whatever, for that would be in direct violation of the original contract on creation of the same in many cases. Baboo Protap Narain Sing, Deputy Collector here, who is a landowner, makes an important remark that, whereas the rents of *putni* and *durputni* tenures are not enhanceable on account of alluvion nor abatable though diluvion, the Bill by section 8 proposes to make them so. The effect of repealing the Regulation regarding them (VIII of 1819) and substituting the general law of tenures here propounded should therefore be carefully forecast.

Chapters III and IV.

22. The sudder sub-committee think it not advisable to make the law complex by creating two classes of rights (paragraph 5), although they think it expedient and necessary to extend protection to ryots of three years standing; but with one exception, they agree that the right of occupancy involving the obligation to pay rent according to the Collector's table of rates should attach to all such ryots, with this proviso that the right to sell should not accrue till after twelve years possession.

23. The sub-divisional sub-committee say public opinion is against this section; but they are for it, because the ryots can only be protected from unjust ejectment by it. They think that if the right of occupancy were given after three years, ryots would neglect to improve their lands and the zemindars would intrigue to defeat the right and cause dissension between landlord and tenant. Twelve years, on the other hand, gives the landlord time to judge of the conduct of his tenant. There has been a great tendency among occupancy ryots to sublet their holdings and thereby become middlemen, and if three years gave the right, speculators would come in and sublet merely for profit and not for the improvement of the soil or of the condition of the actual cultivators, and thus defeat the latter which is the primary object of the proposal.

24. The Moonsiffs of Kotulpur and Khattra (Baboos Ananda Nath Mojumdar and Hemanga Chandra Bose) are against the proposal of creating a fourth class of ryots, partly as encroaching on the just rights of the superior landholder and partly as placing poor rent receivers at the mercy of their ryots against just enhancement.

25. The Moonsiff of Gungajulghatty and his meeting think three years occupancy rights would be beneficial to both zemindars and ryots only in the case of waste lands, otherwise they would retain the twelve years as at present. The meeting was much divided, however, on the question.

26. My own opinion is that three years is too short a period to acquire the rights proposed by the Bill, and that it is at least premature to offer compensation for mere disturbance of possession. The zemindar need not sue for three years for arrears. The question of actual possession is, as shown in the criminal courts, a subject of dispute for at least five or six years. This is a practical objection. Twelve years is the limitation for an adverse title. The improvements made by every reclaiming tenant may be protected by a compensation clause, nor am I in favor of two classes of ryots being created instead of one as at present. The question as regards Behar may admit of a reduction in the period for acquiring rights of occupancy; but as regards Bengal, considering the advancing intelligence of both zemindars' tenure-holders and specially of ryots, I would submit that the present period of twelve years does not imperatively require to be altered in favor of the last mentioned class. All agree that there is no reason why the tenants of mukararidars and istemraridars should not also acquire the right of occupancy (paragraph 6).

27. With reference to clause (c) of section 19 (paragraph 7), the sudder sub-committee think the immediate tenant of an occupancy ryot should be allowed to acquire a right of occupancy. They say that as a fact a number already enjoy rights of occupancy, and it would not meet the wish of the Bill were they not also protected. The sub-divisional committee are against sub-occupancy rights being acquired, saying that to present their ryots with the right would oust actual cultivators, and the real cultivator would suffer instead of benefit by the provision. If, however, it be acquired, they propose the superior occupancy right should abate.

28. The Moonsiff of Kotulpur thinks that sub-occupancy rights will cause the disappearance of the existing distinction between tenure-holders and ryoti jotedars, remove still further the chance of zemindars getting khas possession of land, necessitate measures for the adjustment of their relations and so tend to surround the rent-law with all sorts of complications.

29 The present law does not by express rulings allow of sub-occupancy rights. This is settled law, whatever may have been the intention of the authors of the law, and therefore there are no real rights which would be confiscated by omitting this provision.

30. As the Bill stands, there might be an indefinite number of such rights acquired one below the other.

31. My own view is against creating a fifth class of ryots, viz. first ryots with fixed rates; second ryots with enhanceable rates, but with rights of occupancy; third ryots holding over three years (Bill); fourth sub-occupancy ryots (Bill); fifth tenants-at-will.

32. There is no sufficient need for this provision so far as I can see, if certain compensation be allowed for certain improvements made in the way of reclamation. In Chittagong the ryots make large embankments and shut out the tidal overflow provided they get permanent leases, and for several years rent-free. The zemindars do nothing themselves. The hill tribes reclaim even with only one or two years rent-free. Here also the ryots reclaim land and then some of them are immediately assessed at full rates. Only Sonthals, Bouris, and other aboriginal tribes I believe submit to such terms.

33. Whether the superior landholder is to be allowed to contract himself out of the law regarding the acquisition of rights of occupancy (paragraph 8), is answered in the negative by the sudder sub-committee, unless on the face of the contract the reasons stated in the opinion of the court be considered good, while the sub-divisional sub-committee would reply in the affirmative. If, however, they add, the Government still consider on grounds of public policy that the landlords should not be allowed to contract themselves out of the law, then they recommend that the contract last good only for the lifetime of the contractor (ryot or landlord)?

34. The Moonsiff of Kotulpur is against interfering with contracts. Undoubtedly this sort of interference is not yet well understood in this country any more than in England. It is admitted there now that landlords and tenants do not stand on equal terms, but it seems to me that it would be wise to limit the application of this principle to cases where there was no written contract originating the relationship.

35. My own view therefore would be that this right shall begin to accrue in all cases except where from a certain date the rent giver was let into possession by means of a written contract containing this reservation expressly. It is presumed that at the inception of the relationship the two are and ought to be treated as on equal terms, but that afterwards they are not in fact so nor ought so to be treated.

36. The sudder and sub-divisional committees both agree (paragraph 9) that occupancy ryots should be allowed privately to sell or give away their occupancy tenures.

37. The Moonsiff of Kotulpur is, however, against it without the permission of the zemindar. Its chief reason is lest one zemindar purchase under another merely in order to cause a row. If, however, he be allowed to sell it, there is no reason, he writes, why he should not be allowed to mortgage it, saying the Bengal mahajuns and ryots are not like the Dacca sowcars and ryots. Baboo Hori Sunkar Dutt, Pleader of Bishenpur, is against the permission to mortgage on the ground of the grasping nature of the mahajun.

38. The sudder sub-committee would allow by a majority the right to mortgage as well as liability for sale for any decree, provided the purchasers are subject to the liability to pay the arrears due.

39. The sub-divisional sub-committee unanimously would give the right of mortgage and liability to sale for any decree, representing both land-holders and ryots. The Moonsiff of Khattra also concurs on both points, and so does the Moonsiff of Gungajulghatty. I think there can be no doubt that as a large number of such tenures are held transferable, and this quantity by custom is increasing daily, and as the zemindars themselves see no real objection to it but probably an additional security for their rent, the law may now be allowed to declare all occupancy rights transferable, especially as the tenure itself is a creature of the Legislature.

40. My own view is also that it should be mortgageable also as well as liable for sale on any decree. It would be futile to attempt by legislation to make it non-mortgageable, because the law would be daily avoided by the use of two deeds or by a private understanding, and it would I think be more injurious than beneficial to the credit of the ryot. Here ghatwali tenures are not mortgageable and the ghatwals as a result are improvident, negligent, and non-improving tenants.

41. The liability to sale for any decree should, I presume, be made clear to be subject to hypothecation for the rent of the landlord as suggested by the sudder sub-committee.

42. With regard to doing away with ejectment of occupancy ryots for arrears (paragraph 10) by clause (*e*), the sudder sub-committee silently assume its correctness; no doubt in consequence of the provision that the occupancy right may be put up for sale by the zemindar, while the sub-divisional sub-committee expressly approve of this provision. The Moonsiff of Kotulpur, on the other hand, thinks the zemindars have done nothing to be deprived of this power. There is no harm in keeping the present power of ejectment as far as I can see.

43. The power of ejectment of the ryots for breach of any stipulation expressly declared to involve re-entry in the written contract is unanimously condemned by both sub-committees as well as by the Moonsiff of Kotalpur. The insertion of this provision would imply that, except in this manner, ejectment for breach of contract should not ensue. I think the proper form to benefit the ryot, would be to make it substantive law that no ryot having a right of occupancy shall be liable to lose his right except by a substantial breach going to

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the root of the contract, with reference to the terms of the individual lease, whether the contract be express or implied, written or unwritten. This also would adequately protect the land-holder, whereas the present proposal might be used oppressively by the latter.

44. The provisions of the Bill (as set forth in paragraphs 109 to 112 of the Commissioner's Report) are too comprehensive, including ryots who are tenants-at-will as ryots at fixed rates. Further, tenure-holders are to be governed by a different law regarding ejectment for changing the use of the land from ryots at fixed rates, although the tenure of the latter may be a more permanent and valuable one than the former, and, presumably, in most cases, very much older. The law here offered is very complex without any valid reason apparently.

45. The provisions of section 21 regarding rent in kind (paragraph 11) are supported by both committees.

46. As the limit follows the existing practice, I have nothing to add except that the Bill has taken no precaution against a land-holder's changing the rent from money into kind, then enhancing and then afterwards endeavouring to change rent again into money. The maximum rent could then be raised from one-fourth into one-half of the average annual produce and the law defeated, for there is no provision for abatement of rent where the maximum has been exceeded. The first step would be easy, as probably beneficial in the eyes of the ryot; likewise, the second by means of the court, and the third obtained as a compromise while litigating the second. It is quite certain that devices will be resorted to in order to get the benefit of the one-half clause. The provisions of sections 22 and 23 regarding enhancement (paragraph 12) are unanimously approved by the sudder and sub-divisional committees and by the Moonsiff of Kotalpur.

47. The Moonsiff of Gungajulghatty and his meeting, on the other hand, disapprove of the limit of one-fourth of the average annual produce as inequitable to the zemindar when rents are paid in cash, but approve of the other maximum rates as well as the provision that the enhancement within ten years should only amount at most to double the rent. They also think the same maximum should be laid down for tenure-holders and ryots not having occupancy rights. The limit of one-fourth of the average annual produce for occupancy ryots may I think be enacted.

48. The sudder sub-committee, however, would like to see the limit of double the existing rent applied also to the first ground of enhancement, viz. where the ryot's rate is below that in the vicinity, on the ground of too sudden hardship. On the other hand, the majority of them suggest a right of abatement when his rate is above the prevailing rate. I do not concur in the former suggestion but with the Commission, although the grounds have not been set forth in their report (vide paragraph 61), because I understand that the courts have full power to mitigate the suddenness of the hardship to any extent by gradual annual increase. Such power therefore must be sufficient to meet all cases. As regards the latter he who seeks equity should do equity is quoted in support of some of the proposals of the Bill (vide paragraph 51 of the report), but I am clear that the prevailing rate can never be increased unless some such opening be left to the landlord, whereas the Bill does expressly allow an increase over the prevailing rate on the third and fourth grounds which would be neutralized by such a provision. This suggestion would tend to produce a dead level of fixed rates, and is therefore out of the question at the present day.

49. Regarding the enhancement of the rents of tenures and under-tenures the proposals of the Bill have been, as I said before, approved here, except that the Bishenpur Sub-Committee would reserve a minimum profit of 10 per cent. of the average annual produce to the holder. In this I concur, and would recommend accordingly. Otherwise, I also approve of the other provisions of the Bill on this point. That these provisions, however, as well as those of occupancy, should be applied to the ground rent of towns is an extension of their effect whose results cannot be foreseen, but would certainly be startling. Take, for instance, the provision that the ground rent can only be doubled and not enhanced again for ten years. In large tenures this would become serious nuisance and be sheer tyranny. The sudder sub-committee have sanctioned the acquisition of a right of occupancy in ground rents, and would like it to have retrospective effect. I think myself people who build valuable houses in towns may well be left to make their permanent or long leases. It may be indeed necessary to define how far these provisions are to reach in that direction and there is no doubt some difficulty on this score. It would be better clearly I think therefore to leave the *status quo* and to legislate only for agricultural holdings. specially as there has been no very great grievance over the High Court rulings on this border line. No one here has suggested a different basis for enhancement, and as the annual gross produce is appealed to as the limit, and the existing grounds have not been seriously impugned at any time any where, they should I think remain.

Chapter VI.

50. Both the sudder and sub-divisional committees agree that the limit to rent for building purposes should not exceed 5 per cent. of the market value of the land (paragraph 13), although the Moonsiff of Kotalpur would make it 4 per cent. I quite agree that for agricultural villages it is necessary to fix a limit, but the border line should be carefully drawn, as I feel strongly opposed to applying these provisions to trading villages

or towns Perhaps the conditions antecedent to the introduction of the Municipal Act might prove a good border line of the application of the Bill along with another that the householder must be substantially a ryot within the meaning of the term as defined in the proposed law. I do not contemplate these provisions to be intended for tenure-holders for whose benefit this Bill is apparently not intended.

51 Could not a proportion of the holding be fixed which the occupancy ryot might be entitled to get, if available, as building land at a fixed limit. I think this the safest solution. I do not presume that legislation is required for tenants below occupancy ryots in status, nor would I advocate it.

52. The sudder sub-committee approve generally of the provisions of this chapter, regarding the result of changing the use of the land I have already remarked on this point while discussing paragraph 10 of the Government letter, that the enacting of the clause there recommended would save the necessity of these provisions, which as they are also stated are open to criticism. The Moonsiff of Kotalpur has no objection to extending rights of occupancy to lands used for building purposes, but would settle what is a fair rent separately for each district. The practical objection to such a course is obvious, seeing that the site and demand vary extremely in each tract and even village, and that no officer could strike an average even for a whole village much less for a tract of country except by taking away from the zemindar or tenure-holder the fair profits of his or his ancestor's selected bargain from many sites and giving excessive ones to others.

Chapter VII.

53. The sudder sub-committee think with regard to the doctrine of merger, here laid down (paragraph 14), that it is proper, but would not require publication on the land of the contrary intention of him in whom the two interests, superior and inferior, unite.

54. The sub-divisional committee concur entirely in the provisions of the Bill.

55. The Moonsiff of Kotalpur protests, but evidently under a misapprehension, against merger in the case of private individuals' interests.

56. My own view is that it would not be advantageous to Government to be compelled to merge always, as also to give retrospective effect to the proposal, but I agree on the whole as to its political expediency.

57. The time allowed to private individuals within which to declare their intention to the contrary is, however, too short I think, and should be extended to at least one year. It is not easy to get purchasers to these interests within that time, and often the holders are absent for that period on pilgrimages and the like. Besides, it does not say that they can afterwards obtain a merger by a similar declaration to that effect. This should be made clear one way or the other.

58. The saving of minors, lunatics, and the like is not, I think, in the true interests of the public. I admit that it is in accordance with existing practice, but I hold that these saving clauses should be discouraged at the present day, leaving the guardians to meet the objection of the minors afterwards, but preserving the interests of the classes holding under these interests.

Chapter VIII.

59. The sudder sub-committee strongly object to the registration of tenures in the landlord's serishta, and would substitute registration with the executive authorities (paragraph 15). Their reasons against the scheme of the Bill are in my opinion unanswerable and the alternative they propose along with its reasons is practical and good. I quote it *in extenso* as a good specimen of the ability shewn by the Committee:—"It has been enacted that any succession to, or transfer of, a tenure, under-tenure, or occupancy holding shall be registered in the landlord's or tenure-holder's serishta, and provisions have been made for improving such serishta. We must record our unanimous and strong opinion against these provisions. The zemindar's serishta, where it does exist, is in the hands of gomastas and tehsildars receiving pay from one rupee to five rupees per mensem, and no attempt to improve such serishta will make them reliable. With regard to small tenure-holders and undertenure-holders they have no serishta at all, and any attempt to make them keep a serishta will not only be hardship on themselves, but is also certain to prove utterly abortive. We have made these statements from our practical experience in the mofussil. Any law therefore, which would make it compulsory to register sales in the landlord's serishta, will, we are strongly and unanimously convinced, end in increase of litigation, and perhaps of fraud, and in placing the cultivators entirely in the hands of unscrupulous gomastas. We are strongly of opinion therefore that these provisions should be recast.

"We propose the following provisions instead of the present provisions of the Bill. When any sale of a tenure, under-tenure or occupancy holdings takes place, the tenure-holder, undertenure-holder or occupancy ryot shall appear before the sub-divisional officer or the district officer and file the deed of sale within four months after its execution. He shall also pay a fee for a notice to be issued to the superior landlord to inform him of the transaction. The sub-divisional officer, or the district officer, as the case may be, shall on receipt of the fee issue a notice to the landlord and shall make an entry of the particulars in a register which shall be kept for the purpose, and shall be called the register of transfers and successions of tenures and holdings. If the zemindar does not within four months after the issue of the notice bring any objection, he shall be supposed to have recognized

the transfer, and shall be estopped from bringing any objections afterwards. If he does bring any objection within four months from the issue of the notice, the sub-divisional officer or the district officer shall simply record it against the entry in question, and leave the parties to settle their differences in the civil court. The deed of sale shall be returned to the party who files it after the objection of the landlord has been entered, or after the term of such objection has expired. We would allow the landlord this chance of bringing an objection, as a sale may, under some circumstances, be illegal and prejudicial to him. For instance, an occupancy ryot may sell one-half of his holding which he has no right to do without the consent of his landlord.

"In the case of succession a similar procedure shall be followed, excepting that it will not probably be necessary to produce or file any documents.

"We would add a provision that when the procedure, as described above, is not followed, the zemindar shall nevertheless be estopped from objecting to a sale or succession if he has entered it in his serishta, where such exists, or has otherwise recognized it by his own action, as for example by receiving rent from the new comer. Such a provision is necessary for the security of those poor cultivators who may not be able to have the necessary entry made at the sudder or sub-divisional office, and who nevertheless should not be left at the mercy of the zemindar after the latter has once consented to the transaction.

"It will be seen that we have made no provision for fees or *salami* to be paid to the zemindar on sale or succession. These were *abwabs* of the olden time to which the zemindars are not rightfully entitled. If the right to sell is recognized by Statute in tenure-holders, undertenure-holders and ryots, all difficulties and hindrances to the prosecution of such rights should be removed once for all. It would be absurd to say to the occupancy ryot 'you may sell if you like,' and then to tell the zemindar 'you need not recognize the sale until you get a hundred rupees.' To recognize a right of the occupancy ryot under such condition would be a mockery."

60. The sub-divisional committee concur in the provision of the Bill without assigning any reasons, while the Moonsiff of Kotalpur would retain the present law thereon. The zemindars already mentioned say the fees proposed in the Bill for the registration of transfers of ryots' holdings are lower than what is current. In my own experience the provisions of the present law have not shown themselves to have any life if we are to judge by the litigation thereon. I am not sure, however, whether these registrations should not be before the rural sub-registrars, and the objections, if any, registered before the same officers, the necessary notices being served as usual through the Collector. The Collector's serishta is already overburdened with land registrations and this proposal would be an useful auxiliary check and reference The succession dues exist still in England, and I doubt whether their loss would not be viewed as an unjust or at any rate a harsh act towards the zemindars, especially as this is a legitimate subject of taxation by the paramount power and might now be taken advantage of.

Chapter IX.

61. The sudder sub-committee think that the deposit of rent (paragraph 16) should remain with the civil court, as the sub-divisional treasury is during the cold season open only once a week and often only once a fortnight. The sub-divisional committee, on the other hand, approve of the Bill on this point, and especially notice the precautions provided against the abuse of the present law where deposits are made without any previous tender made and refused. They further suggest provisions empowering the receiving officers to call for evidence when doubts or objections are made by any one present in behalf of the landlord at the time of making the deposit. The Moonsiff of Kotalpur thinks no material change necessary. The Moonsiff of Gungajulghatty and his meeting think the deposit of rent should remain as it is, or rather be deposited in every thana or outpost with a responsible officer. I concur with the sudder sub-committee. Moonsiffs are more numerous than treasuries, and there is less chance of fraud and more of compromise by deposit being made there where the rent receivers have pleaders and mooktiars. The treasury officer is a most unsuitable person to see in a depositor any other than A and B. It might as the sub-divisional committee say, simplify the Moonsiff's accounts, but I fear not the relations of landlord and tenants.

62. The sudder sub-committee are silent about the provisions for the apportionment of rent, but the sub-divisional committee support them with the odd reason that they would decrease the number of applications for a butwara, where the lands also get split up (paragraph 16). I concur with the Commission on this subject, and for the reasons given in their paragraphs 127 and 128.

63. All agree to the provisions regarding hypothecation of the tenures and holdings for their rent as discussed in paragraphs 129 to 132 of the Report (paragraph 16). Regarding the preference of the landlord over other creditors dealt with in paragraph 133, I think it is the least return they should get for the sacrifice of their interests in the rest of the Bill in making these tenures and holdings so valuable to their tenants.

Chapter X.

64. Both committees approve *in toto* of the provisions regarding coparceners (paragraph 17) without assigning any reasons. I agree with Mr. O'Kinealy that it is impolitic to extend the exceptional jurisdiction of the Court of Wards.

65. On the other hand, it is, I think, impracticable for the Judge to find a manager for small properties, therefore he should be empowered to cause an election of one coparcener by the others, or, failing that, elect one himself and compel him to act as manager and to give reasonable security. I concur generally with the provisions of this chapter for the reasons set forth in paragraphs 134 to 137.

Chapter XI.

66. The criticism of the sudder sub-committee, as well as the amendments proposed by them, deserves embodiment here on the points most calling for notice according to paragraph 18 of the Government letter, *i.e.*, regarding tenants' improvements, the ryot's right to trees, and the compulsion of the auction-purchaser to elect to avoid subordinate tenancy within one year of his purchase—

"Section 77, clause (*a*) of the Bill allows the ryot to make certain improvements in his land as defined in section 29 of the Bill. We unanimously agree that this is a step in the right direction, and will lead to improvements in agriculture by giving encouragement to the very class of persons from whom all such improvements are found to emanate in Bengal.

"We only desire to make two slight alterations in the wording of section 29. In clause (*f*) of the Explanation we would substitute for 'fruit trees' the word 'trees' so as not to change the character of the holding. To allow the ryot to grow fruit trees only, and not bamboos, for instance, or date trees, for the purpose of obtaining the juice, would be to impose an arbitrary and unnecessary restriction. The alterations we have suggested would have the effect of allowing ryots to grow bamboos also as well as other kinds of trees; while it would protect the zemindar in an effectual manner, inasmuch as the character of the holding held under him shall not be changed, and a cultivated land for instance shall not be converted into a mangoe garden. The wording of the Bill did not allow this protection.

"The other alteration which we would suggest is that the following words be added at the end of clause (*b*), viz. 'provided that such works be beneficial to the particular holdings on which they are made.' The President did not agree to this addition being made, but it was carried by the difference of one vote in its favour.

"Clause (*b*) of section 77 allows a ryot to cut down and appropriate trees on his holding, and planted by himself or by any ryot from whom such holding was derived. We unanimously agree to this provision.

"Clause (9) of section 79 read with number 16 of the third schedule compels an auction-purchaser to elect to avoid a subordinate tenancy within one year from the date on which such purchaser first has knowledge of the existence of such tenancy. This is somewhat vague. We would add a proviso that the period should in no case exceed three years from the date of the confirmation of the sale."

67. The sub-divisional committee report that in some parts of the country one-fourth of the value of the trees planted by the ryot goes to the landlord and the balance to the ryot, while the proportion differs in other parts. Consequently the rule varying they agree to the provisions of the Bill. They add that the outgoing ryot ought to have the crops raised by him. The Moonsiff of Kotalpur is for giving the ryot compensation for improvements, but against the ryot being allowed to cut fruit trees, thinking that he is amply compensated by the enjoyment of their fruit, and that he would cut them down on relinquishing or selling his holding. He suggests that the crops of an ejected tenant should be made over to the zemindar, who should be required to pay their value to the ryots.

68. He concurs as to the propriety of reducing the period of limitation to an auction-purchaser for ordinary subordinate tenancies to one year.

69. I concur with the provision set forth in paragraph 138 by the Commission.

70. With regard to the right of landlords to make a measurement and survey, as expounded in their paragraph 139, I would suggest that some limit on the frequency of this operation should be made, as it is well known to cause great excitement among cultivators. If by the same landlord I would restrict it to one in ten years, and if by the Collector the same period, whoever may be the landlord.

71. In order to ascertain a pergunnah standard pole, I see no charm in the Collector's decision on this point. Now-a-days the District Judge could determine the matter as well by taking evidence on the point or deputing a subordinate judicial officer for the purpose (paragraph 140). The question I think rarely arises in Bengal.

72. I concur in the provisions of section 77 with regard only to tenure-holders and ryots with rights of occupancy, but certainly would not allow all of the so-called improvements (*a* to *f*) to a mere squatter without the consent of the landlord. The digging of a tank often turns out a failure, or is only half done, and yet the land is ruined and the ryot walks away after perhaps audaciously asking for compensation. The zemindars already mentioned admit that a ryot pays for leave to dig a tank a fair amount of *salami*, besides a compensation of 35 to 40 years jumma of the land used for the purpose. Only men with a genuine stake in the soil ought to be allowed to touch its surface. Again, embankments in valleys may be made and may cause serious damage to lands below them should they overflow or burst. The ryot walks away as he has no stake in the soil, and the sufferers must put up with his engineering failures without any compensation.

73. These provisions therefore require a little cutting down. The right of ryots in general to cut trees should be confined similarly to tenure-holders and ryots having rights of occupancy, and the onus should be thrown on them and not on the landlord to show that they or their predecessors planted them; otherwise they would from failure of evidence to the contrary in most cases succeed in appropriating timber of spontaneous growth, which would amount to a clear confiscation of the landlords' rights.

74. The time allowed for election to avoid subordinate tenancies to an auction-purchaser should be extended, as the sudder sub-committee suggest, or the time during which a public officer is employed in measuring his lands and ascertaining his subordinate tenures and holdings should be excluded. With regard to the disposal of the crop of an ejected tenant, I think we should follow the simple suggestion of the Moonsiff of Kotalpur and compel the zemindar, if necessary, to pay him its fair value and to give security for the same, but on no account allow the tenant to continue in possession without the consent of the landlord.

Chapter XII.

75. The sudder sub-committee do not think any of the special provisions for Behar suitable for Bengal proper (paragraph 19), while the sub-divisional committee are silent on the subject. The former no doubt partly think so because of their adverse opinion on the question of the jurisdiction of the Collector.

76. I concur, if this be their reason, in the dependence of the suitableness of sections 84 and 85 on the question of jurisdiction. The question of form of receipt discussed in paragraph 150 of the Commission's report depends on the practical question of the possibility of a knowledge of forms by illiterate rent receivers.

77. The burning question for Behar is the question of the reduction of the period necessary to acquire a right of occupancy. It should nowhere be less than six years because of the long standing quarrels as to who is in actual possession, and to the frequent actual changes therein by means of vismajor before the matter is finally settled (paragraph 152.)

Chapter XV.

78. The procedure for enhancing the rents of occupancy ryots and tenure-holders has been disapproved unanimously by the sudder sub-committee (paragraph 20). I extract their reasons *in extenso*:—

"We are willing to retain the portion of this procedure which relates to the Collector preparing tables of rates. It is possible to suppose that in many cases this will be useful. It is possible that when such a table is prepared authoritatively, zemindars and ryots will find means to settle their differences peacefully and accept the rates. If the zemindar finds the Collector's rates are not as high as he expected them to be, he will certainly give up his first hopes. Ryots, too, when they know that the table will be accepted as conclusive evidence by civil courts as far as it goes, will probably submit to it without going to the civil court. We are therefore willing to retain this portion of the procedure, and to provide that the Collector shall fix a table of rates on the application either of a zemindar or of ryots, the applicant paying the expenses in either case.

"When the Collector has prepared his table of rates the parties must go to the civil court with their suits, and the Collector should have nothing more to do. We are unanimously and emphatically of opinion that the Collector or his subordinates should not try enhancement suits, should not make enhancement jummabundies, and should not make settlement jummabundies. Our reasons for holding a strong and unanimous opinion on this point are numerous, and we can only briefly mention the principal ones

"When the table of rates has been prepared and the zemindar wishes to enforce it against his ryots, each individual ryot will be allowed to bring forward his own case, and numerous and varied questions will arise which the Collector's subordinates have neither the time nor the special training to be able to decide, and which the civil courts have always decided and are the best able to decide.

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"Such will be the objections raised by ryots after the table has been prepared; and we submit that those are questions which should properly be decided by the civil court and not by the executive. The executive is better qualified with its knowledge of the country to ascertain the prevailing rates, *i.e.*, to observe and enquire into and record facts as they exist, but the executive are not better qualified than the civil courts to enquire into the validity of titles based on evidences of various degrees of credibility. This is exactly the work which moonsiffs and judges have patiently done for years past, and are the best qualified to do by their training and their education; and there is absolutely no reason why this work should be transferred from their hands and placed in the hands of the Collector's subordinates, who have no experience or special training for the work. Deputy Collectors can perform the work quicker only by giving less careful consideration to every claim and title and link in evidence than moonsiffs habitually do. If a speedy and summary procedure were preferred, moonsiffs may be entrusted with it as well as Deputy Collectors, and there is no reason for transfer of work; but if a full investigation into claims be considered more essential, then there is even less reason for transfer of the work, as moonsiffs are admittedly better trained for this work than Deputy Collectors.

"There is perhaps yet a graver objection to the work being transferred to the executive. At present all contending parties disputing about civil rights, are allowed to have their

claims heard by civil courts, and this is so even when such claims are against Government itself. The result is an implicit confidence in justice as administered under the British rule. It would probably not strengthen this confidence if the executive, at the request and at the cost of the landlord, were to step in and do the work of framing a jummabundee which should legitimately have been done by the landlord's gomasta, and decide claims and titles in a summary manner without allowing the ryots to appeal to the civil court. It would be unwise we think for the Government thus to lend its agency to one of two contending parties, and to declare that there is no appeal from its acts to the civil courts. The zemindar and ryot have undoubtedly contending interests, and the framers of the Bill admit that by the new procedure they 'have placed the executive agency of Government at the disposal of the zemindar.' This we submit is going too far. As between two contending parties, Government should hold the balance evenly, and should not even in appearance place its services at the disposal of either.

"These remarks apply as well to settlement jummabundee as to enhancement jummabundee. When a zemindar has bought an estate by auction, and cannot settle with his ryots, it is no more the Collector's duty, we think, to come to his relief, than it is his duty to relieve the auction-purchaser of any other article. In these matters individual prudence and self-interests should we think be trusted to. It is the purchaser's duty to ascertain the value of the property and even the state of feeling of the ryots towards their landlord before he bids, and if he makes a mistake in calculation, he will naturally suffer like other people who commit mistakes. Of course, zemindars after purchasing an estate would naturally seek to obtain the assistance of the executive, as they know that such assistance or even show of sympathy on the part of the executive would greatly help them to obtain better terms from ryots. But this is exactly the reason why Government should withhold such assistance, and not lend it easily to one as against the other of two contending parties."

79. It will be observed therefrom that the confidence in and desire of retention of the civil court has served the enlightened members of the committee so that they do not like to go back again to the revenue court. No remarks are made on the concurrent jurisdiction offered, but it is presumed that it is considered out of the question. The most that this sub-committee would admit is the possible usefulness of an authoritative table of rates. The zemindars already mentioned object to the Collectors fixing the pergunnah rates, claiming this for themselves according to the custom hitherto in vogue. As the gathering of those would be very expensive by the agency proposed, I think that for the sake of possible utility "le jeu ne vaut pas la chandelle."

80. The sub-divisional committee think the authoritative table of rates objectionable as interfering with the rights of parties to choose their own times in making settlement. The Moonsiff of Khattra thinks the revenue courts the best for settling enhancement disputes but the concurrent jurisdiction as one likely to lead to complication as well as to splitting up of cases and great consequent expense.

81. The Moonsiff of Gungajulghatty and his meeting think the civil court alone the best for suits of enhancement and abatement, and the authoritative table of rates not needed when the zemindars will have to pay for it, nor indeed would it be beneficial to them. They think, however, such a table desirable, and that it should be collected by the police and published annually in the Government Gazette. Even the zemindars already quoted think also the civil court the best tribunal for enhancement suits.

82. My own view is that the elaborate procedure proposed is quite a retrograde step. There are difficulties in enhancement suits, but these will not be successfully met by either a concurrent or an exclusive jurisdiction in the Revenue authorities. They will as before cut the Gordian knot no doubt and without the same resignation on the part of suitors or the same skill on their own part as formerly. If the civil court requires improvement it might be given. Facilities by the creation of sub-moonsiffs or by the temporary deputation of sub-deputy collectors might be afforded for local judicial enquiries and inspections. This is an acknowledged defect in the present constitution of these tribunals. They are stationary and therefore too far apart from the living current of views of the people around them. In consequence the rules of practice become crystallised into a rigid set which becomes obsolete in a short time and requires the aid of the Legislature, oftener than otherwise would be necessary. Financially speaking also the proposed procedure would not be economical. Revenue officers would have to be created owing to the detailed state of the administration now as compared with before 1869, and also at the same time it would be found that the number of moonsiffs could not be reduced in at all the same proportion.

83. The suggestion that sections 112 *et seq.* might be usefully enacted seems not to be a matter of much moment, as the existing law (section 38 of Act VIII, 1869, B.C.) provides the same remedy, viz. by the aid of the Collector, and such applications are extremely rare in my experience of late years. The sub-divisional sub-committee are silent on the question. I myself concur with the sudder sub-committee and think the whole difficulty of enhancement might be met by the temporary deputation of Revenue officers for the purpose of local enquiries on the requisition of the High Court to the Government, or by the deputation of junior moonsiffs who might get the aid of the Collector while so deputed.

84. The table of rates is liable to be overturned by a single ryot. Where there is a combination of ryots one would be put up to do so, and the whole expense incurred by the

landlord would thus become fruitless. I do not therefore recommend it except as a purely Government institution all over the country.

CHAPTER XVIII.

85. The new procedure proposed for the trial of ordinary rent suits (paragraph 21) will, in the opinion of the sudder sub-committee, help zemindars to realize rents more quickly than before. They object to cases being decided finally under this procedure where questions of title are at issue.

86. The sub-divisional sub committee report that the general public are not gratified with the proposal to make rent suits summary.

87. The Moonsiff of Kotalpur is likewise against a summary procedure for the trial of ordinary rent-suits, saying that the work is at present being smoothly done, and that of late a great improvement has been effected in the degree of expedition with which they are generally disposed of.

88. The Moonsiff of Khattra thinks the present procedure as speedy as is consistent with justice in disputed cases, and in cases where the amount of rent is not disputed there are no disputed payments. He also approves of finality in cases of ten rupees and under, and would like under certain necessary restrictions to see this idea extended.

89. My own experience has been that it is necessary to calculate on two hearings in rent cases, one to examine the parties and discover their admissions and denials from the documents filed already or put in on that day, and the other to bring the necessary oral evidence in support of the points found to be in issue. The proposed procedure still clings, however, to the notion that suitors will bring all their evidence until they know what is to be admitted and what denied. To do so is to *add* to the costs of the suit amounts found to be unnecessary. The engines of the Civil Procedure Code are not allowed free play in order to find out the truth, and here, as much as any where in the range of litigation, are they necessary.

90. I would suggest the simple devices being used of serving a copy of the plaint in all cases along with the summons and of the schedule of documents exhibited, and of giving the courts full discretion to take security from both parties whenever it thinks this necessary before judgment, or after judgment in *ex parte* cases. I would also give them power to insist on execution being taken out within a reasonable time after judgment, say three months; of course to be stayed on the authenticated appearance of the judgment-debtor with the consent of the creditor, because I found constantly that *ex parte* cases were re-opened after three years by the debtor appearing and stating that he had never received the summons when the time had long gone past of proving its service.

91. I have no remarks to offer on the schedule of limitation (paragraph 22), but I should like to see a clause introduced in this Bill to compel parties in cases of disputed possession to go to the civil court. At present each declines maintaining that he is in possession because each knows that whoever sues has the onus thrown on him of proving his case. I think that endless litigation in the criminal courts would be saved by such a provision as the following.

92. Whenever a district or sub-divisional officer from the report received by him or otherwise sees that with regard to any land two parties are disputing with regard to either manual or rent-receiving possession, he may make a report to the moonsiff having jurisdiction, who will thereupon call on both parties to produce evidence of possession of the subject in dispute, and will in a summary manner decide the dispute and dispose of the question of possession pending the institution of a regular suit. The Magistrates at present are bound to find that the dispute is likely to end in a breach of the peace, and they almost always fail on this point. Further, they get lost in documentary evidence, and their cases become fruitless after an expensive litigation up to the High Court. The costs of process to bring them before the moonsiff may be advanced by the executive officer and the rest by each party. All costs of Government to be realized from the successful party at once, leaving him to recoup them from the other party if so stated in the decree, and all other costs to follow the ordinary practice.

93. The members of committees and the parties they represent, *i.e.*, zemindars or ryots, are given separately as far as possible.

94. The other provisions of the Bill not specially alluded to in the Government letter have not been reported on here. A summary of the innovations on the existing law I have recommended or disapproved may now be conveniently made.

CHAPTER I.

No. 1.—The arbitrary limitation of the holding of a ryot to 100 beeghas is not recommended (paragraph 3, Government order).

No. 2.—The tenure-holders ought to be allowed a minimum of 10 per cent. of the average annual produce as profit in enhancement cases.

No. 3.—Putnidar &c. tenures ought to be adequately protected from the general provisions regarding tenures in the Bill, *e.g.*, alluvion and diluvion (paragraph 4, Government order).

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Chapters III and IV.

No. 4.—The three years occupancy right should not be enacted for Bengal, but the present period for 12 years should remain. As regards Behar any change should not reduce the period below six years (paragraph 5, Government order).

No. 5.—The tenants of mukararidars and istemraridars may acquire the right of occupancy (paragraph 6, Government order).

No. 6.—No sub-occupancy right should be allowed, but reclaining non-occupancy tenants should get compensation for certain improvements if ousted (paragraph 7, Government order).

No. 7.—The landlord should not be allowed to contract himself out of the acquisition of occupancy rights by any ryot already in possession from a certain date to be fixed by the Legislature, and in future a landlord may only contract himself out of the law expressly in a written contract executed before the tenant is let into possession (paragraph 8, Government order).

No. 8.—A ryot having a right of occupancy may mortgage his tenure, and it may be sold in execution of any decree, subject to hypothecation for the rent of the landlord (paragraph 9, Government order).

No. 9—The existing power of ejectment for non-payment of rent may remain (paragraph 10, Government order).

No. 10.—The ejectment for breach of any stipulation contracted in writing should not be allowed generally, but it should be provided that no ryot having a right of occupancy shall be liable to lose his right except by a substantial breach of the written and unwritten contract going to the root of the same (paragraph 10, Government order).

No. 11.—The provisions of the Bill set forth in paragraphs 109 to 112 are too comprehensive, including tenants-at-will as well as ryots at fixed rates, nor should ryots at fixed rates through these provisions be governed by a different law of ejectment from tenure-holders who are apparently governed by the general law (paragraph 10, Government order).

No. 12.—The limit of enhancement of rent in kind of one-half of the gross produce is approved, but provisions should be made to prevent money rents, which have a different limit, from being converted by landlords into rents in kind, and then *vice versa*, so as to defeat the money rent limit (paragraph 11, Government order).

No. 13.—The maximum limit of one-fourth of the average gross produce is approved (paragraph 12, Government order).

No. 14.—The ground rents of towns should not, I think, come under the general provisions of the Bill, which should be confined to agricultural holdings (paragraph 12, Government order).

No. 15.—The proposed basis for enhancement, although it should take a share of the gross produce as the ordinary standard of rent, may remain (paragraph 12, Government order).

Chapter VI.

No. 16.—The limit to rent for building purposes should be carefully restricted to agricultural villages taking as standard the conditions antecedent to the introduction of the Municipal Act, and to ryots with occupancy rights and to a fixed proportion of the holding if proved available (paragraph 13, Government order).

No. 17.—The provisions regarding the results of changing the use of the land are unnecessary (paragraph 13, Government order).

No. 18.—No table of rates can practicably be prepared for a district or a tract thereof.

Chapter VII.

No. 19.—The provision regarding merger may be allowed to stand, but the term allowed to private individuals for declaring their intention to the contrary should be extended from three months to one year, and it should be made clear how that declaration is to be revoked. Further, the saving clause in favor of lunatics, minors, &c., is not in the interests of the classes holding under them (paragraph 15, Government order).

Chapter VIII.

No. 20.—The existing and proposed law for the registration of tenures in the landlord's serishta is condemned, and it is proposed to register these in a public office, either the collectorate or the registry (paragraph 15, Government order).

No. 21.—The question of succession does, however, require careful consideration (paragraph 16, Government order).

No. 22.—The deposit of rent should remain with the moonsifs (paragraph 16, Government order).

No. 23.—The provisions for the apportionment of rent are approved (paragraph 16, Government order).

Chapter IX.

No. 24.—The provisions regarding hypothecations of tenures and holdings for their rent are approved (paragraph 16, Government order).

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Chapter X.

No. 25.—The provisions regarding coparceners are approved, but the judge should be empowered to meet the case of small properties to direct the election as manager of one coparcener by the others, or, failing that, to select one himself, compelling the selected party to act and give a reasonable security (paragraph 17, Government order).

Chapter XI.

No. 26.—The provisions set forth in paragraph 138 of the Commission's report are approved (paragraph 18, Government order).

No. 27.—A limit of once in ten years by the Collector, whoever may be the landlord, by the same landlord of the right to make a measurement and survey of his estate or tenure should be enacted (paragraph 18, Government order).

No. 28.—The pergunnah standard may be determined by the District Judge (paragraph 18, Government order).

No. 29 —The provisions of section 77*a*, regarding improvements without the consent of the landlord should be confined to tenure-holders and ryots with rights of occupancy, and these provisions require a little cutting down (paragraph 18, Government order).

No. 30.—Similarly the right of ryots to cut trees should be confined to tenure-holders and ryots having right of occupancy, and the onus should be thrown on them and not on the landlords, to show that they or their predecessors planted them (paragraph 18, Government order).

No. 31.—The time allowed to an auction-purchaser for election to avoid subordinate tenures and holdings should be extended, or the time during which a public officer is employed in measuring and ascertaining them should be excluded (paragraph 18, Government order).

No. 32.—With regard to the disposal of the crop of an ejected tenant, the zemindar should be compelled, if necessary. to pay him its fair value and to give security for the same, but on no account should he be allowed to continue in possession without the landlord's consent (paragraph 18, Government order).

Chapter XII.

No. 33.—With regard to chapter XII, the applicability of sections 84 and 85 to Bengal depends on the question of jurisdiction of the Collector (paragraph 19, Government order).

Chapter XV.

No. 34.—The procedure proposed for enhancement of rent of occupancy ryots is condemned (paragraph 20, Government order).

No. 35.—I would propose as a solution of the acknowledged difficulties of the civil courts in dealing with enhancement suits the deputation either of junior or sub-moonsiffs commanding the aid of the Collector during such deputation or the temporary deputation of Revenue officers to the civil courts on the requisition of the High Court to the local Government (paragraph 20, Government order).

No. 36.—The table of rates can only be recommended as a purely Government institution all over the country (paragraph 20, Government order.)

Chapter XVIII.

No. 37.—The present procedure in ordinary rent-suits may be simplified by the following devices :—

(1) A copy of the plaint and schedule of documents filed.
(2) Full discretion to the courts to take security from both parties before judgment or after judgment in *ex parte* cases.
(3) Execution in *ex parte* cases to be taken out within three months so far as is necessary to bring the decree within the knowledge of the judgment-debtor (paragraph 21, Government order).

General Proposal.

No. 38.—A clause to compel parties in cases of disputed possession to go to the civil courts, something like the following :—

Whenever a district or a sub-divisional officer from the reports received by him or otherwise sees that with regard to any land two parties are disputing with regard to either manual or rent-receiving possession, he may make a report to the moonsiff having jurisdiction, who will thereupon call on both parties to produce evidence of possession of the subject in dispute, and will in a summary manner decide the dispute and dispose of the question of possession pending the institution of a regular suit.

95. I would add here the concluding words of the Moonsiff of Kotalpur :—

"India in its present state is quite unsuitable to elaborate and complicated systems of law. The mass of people are yet steeped in ignorance as it were. Laws which they do not understand and which are beyond their powers to grasp should not be introduced merely

with a view to obtain a theoretical fairness or to remove any slight inequalities existing under the laws in force. The more complicated the laws become, the more the poor people become a prey to the rich and a dupe to the cunning. Simplification of laws should therefore be one great object which the Legislature ought always to keep in view. People of this country can put up with wrongs which custom has rendered tolerable, but they will not easily submit to any thing they consider wrong under a new system. Legislature will do well to confine their attempt to removing what experience has proved to be bad, without aiming at introducing new systems, organising new relations, and creating new sources of dispute between parties whom it is their noble object to bind together in amity and friendship, by establishing something like a community of interest."

List of Members of the Rent Bill Sudder Sub-Committee, Bankoora.

	R. C. Dutt, Esquire,	*President.*
	Baboo Brajendra Kumar Seal, Additional Judge...	*Consulting member.*
	„ Hurryhur Mookerjee	*Pleaders, representatives both for zemindars and ryots.*
	„ Kulada Prasad Mookerjee	
	„ Gouri Sunkur Chatterjee	
	„ Mohesh Chandra Banerjee	
	„ Dwarka Nath Ghose	*Sudder Moonsiff.*
Mofussil members.	„ Krishna Govind Gaswami	*License tax assessor.*
	„ Jogendra Nath Bose	*Moonsiff of Gungajulghatty.*
	„ Dwarka Nath Mookerjee	*A land-holder.*
	„ Nobin Chandra Chatterjee	*A representative ryot.*
	„ Radamadhob Singh	*Ditto.*
	„ Sita Nath Banerjee	*Ditto.*

List of Members of the Rent Bill Sub-divisional Sub-Committee, Bishenpore.

Moonsiff of Bishenpore—

Baboo Annada Prasad Puttack	*Sub-Deputy Collector.*
„ Umesh Chunder Chowdhri	*Pleaders, representing zemindars and ryots.*
„ Abhoi Charan Sarkar	
„ Krishna Chandra Das	
„ Hori Sankar Mukerji	

BANKOORA COLLECTORATE,
The 10th October 1880.

R. C. DUTT,
for Collector.

W. H.—Reg No. 1069 J—122—21-1-81.

No. 1069G, dated Midnapore, the 30th October 1880.

From—J. C. PRICE, Esq., Offg. Collector of Midnapore,

To—The Commissioner of the Burdwan Division.

WITH reference to your circular No. 28T, dated the 6th September last, and enclosures, on the subject of the draft Rent Bill, I have the honour to submit this report, giving chiefly the views, as far as I have been able to ascertain them, of people interested in land; with occasionally my own opinion on those views.

Chapter I, Sections 6 to 15.—Of Tenure-holders and under Tenure-holders

2. The only section in this chapter to which objection is generally taken is section 11, which provides that "every person to whom more than 100 standard bighas of land have been demised by a single demise, otherwise than for a term or year by year, by Government or a proprietor, whether before or after the commencement of this Act, and who has obtained possession of the land so demised, shall be deemed to be a tenure-holder within the meaning of sections 8, 9, and 10." The Government Pleader would raise the limit of 100 bighas to 500 bighas, and would not allow the section to have retrospective effect, at least for twelve years before the passing of the Act. Another pleader, Baboo Upurna Chunder Dutt, would raise the limit to 500 bighas, or at least to 300 bighas. The Contai Sub-divisional Officer would prefer to have no arbitrary limit based on quantity of land, but would rather classify ryots into ryots of first degree, second degree, and so on, as in the case of tenures and under-tenures; and would lay down a sliding scale of rates of rent, to be fixed by the Collector in enhancement cases, calculated on the average produce of the *jotes*, just as the Bill provides in the case of tenures and under-tenures. The Tumlook and the Ghatal Sub-divisional Officers have not offered any opinion on the point. The Government Pleader further observes: "In Midnapore this section would operate very hardly on zemindars who have obtained settlement of jalpye lands from Government, and have leased out, very generally in large parcels, commonly called jalpye chuks They are almost invariably above 100 bighas, and if the law is to have retrospective effect, every such chuk virtually would be a tenure; and practically it would be very difficult to get a fair rent, the lands having been leased at a very low rent in the expectation of getting an increased rent under the existing rules of enhancement."

3. My own opinion on the point is that any limit based on the quantity of land, be it 100, 300, or 500 bighas, is so purely an arbitrary and capricious one that the legislature should not attempt to convert a jote into a tenure, or *vice versâ*, on any such grounds. A jote or a tenure, as understood among contracting parties, should continue a jote or tenure respectively, irrespective of the area of the holding. If at the time a holding is let out and taken it is agreed upon that it should be considered a jote, it should continue a jote; if a tenure, a tenure, and so on. There is no doubt much strength in the argument of the Commission that a "ryot" usually means an actual cultivator of the soil; that when he sublets he ceases to be a cultivator and assumes the character of a tenure-holder; and that a holding which is sublet is a tenure. But I think it is safer in such a case to adhere to established usage and custom, than to introduce an innovation which would certainly subvert existing relations and complicate matters which are now at rest and undisputed between landlord and tenant. There is nothing in a name, and landlords would not object to call a jote a tenure, were not different limitations prescribed in the Bill for the enhancement of the rent of jotes, tenures, and under-tenures.

Chapter II, Sections 16 to 18.—Of Ryots entitled to hold land at fixed rates.

4. No comments are needed.

Chapter III, Sections 19 to 25.—Of Ryots who have held land for twelve years and acquired a right of occupancy.

5. Section 19, explanation 3, specifies the persons by whom a right of occupancy can be acquired, and creates it in many cases not provided for in the existing laws. For instance, sub-tenants of mukarraridars and istamrardars may acquire the right of occupancy, so also sub-tenants of tenants having a right of occupancy. There is no objection raised by the people to the former class of sub-tenants nor to tenants in nijjote, khamar, or seer lands being allowed to acquire such right, but there are objections raised to the growth of a right of occupancy within a right of occupancy. My own opinion is in entire accord with the views of the Commission, to confer such right upon all classes of tenants and sub-tenants who have held land for more than twelve years otherwise than for a term or year by year, be they tenants or sub-tenants under tenure-holders, undertenure-holders, or ryots having a right of occupancy. I fear, however, the good contemplated in the Bill will be frustrated if written contracts be allowed to override legal provisions, for wary landlords when leasing out a holding will take care to introduce into the contract a condition that no right of occupancy shall accrue, even when the land is held for twelve years or more. Clause *h*, explanation 4, section 19, ought to be modified accordingly.

6. Among the legal incidents of a right of occupancy mentioned in section 20, serious objection is taken to clause *d*, by which it is intended to withdraw from the ryot the power of mortgaging his right or land, and makes all such mortgages null and void in courts of justice.

7. The Tumlook Sub-divisional Officer observes—

"The custom with the cultivators is generally to borrow money from mahajuns for the purchase of the bullocks, seed, &c., and for hiring labourers for purposes of cultivation. They will certainly be deprived of this advantage if their lands are not sold in execution of decrees obtained by their creditors."

8. The Government Pleader observes—

"I would not tie the hands of ryots, as the Bill intends, by preventing them to mortgage, or by prohibiting sales of under-tenures in execution of money decrees. The effect of the proposed limitation of the powers of the ryots will be that under-tenures will be also transferred by sales when they could have been temporarily saved by a mortgage and ultimately redeemed by paying off the mahajun. Prohibiting sales of such under-tenures in execution of money decrees will at once take away from the ryots their borrowing powers, whereas it is desirable that every one having some interest in land should have such powers."

9. Baboo Upurna Chunder Dutt observes—

"It is difficult to understand why the power of sale should be left to the ryot and the power to mortgage taken away. If the object of the sections be to prevent improvidence in the ryots, the result of the two sections would be that a ryot for a petty sum of Rs 10 would be compelled to sell his whole jote, as no money lender would keep his jote in mortgage or lend him any money if he cannot bring his lands to sale. To be consistent, either both the powers should be taken away or both given."

10. The Contai Sub-divisional Officer says—

"The ryots often borrow any sum they are in need of by mortgaging one or more bighas of their lands. But there are very few who do not clear their bonds sooner or later. The ryots in general have no other property to mortgage or pledge when they are compelled by urgent necessities to borrow money. Sometimes it happens that unless they borrow money they cannot pay up even the rents of their lands. Consequently what would be their difficulties, if this only source of getting money from any one else in such emergent cases be closed to them for ever, can easily be conceived."

11. The Ghatal Sub divisional Officer observes—

"*Section* 20—Disallows the mortgage of a right of occupancy, but allows the ryot to transfer it by sale, gift, &c. Some hardship will be felt in certain parts of the jungle mehals where the practice of mortgaging is very common. The assistance of mahajuns is needed in cases of emergency. The object of the prohibition being obviously beneficial to the borrowing ryots, their complaints have no material value. All things considered, I think the power of mortgaging should not be withdrawn, for the disadvantage to the ryots would be greater than the advantage. The present condition of the peasantry in Bengal does not call for the interference contemplated They are a fairly well-to-do class with the power of mortgage; were their condition like that of the Deccan ryots, or were a large portion of the Bengal jotes in the hands of mahajuns, legislative interference might perhaps be justifiable. But as matters now stand, I think we should not place any restriction on the privileges enjoyed by ryots as regards their borrowing powers."

12. Some of the gentlemen whom I have consulted take exception to the last sentence of clause *e*, section 20, as regards compensation to ryots for improvements. Prominent among them is Baboo Upurna Chunder Dutt, who observes—

"The clause as to compensation in section 20, clause *e*, would have the effect of neutralizing the effect of contracts, inasmuch as it would in certain cases place non-resident landlords of limited means at the mercy of a rich tenant. Besides no man ought to be made a gainer by his own wrong doing. It is feared that such a provision instead of operating as a check on breach of covenants would encourage such breaches, as the wrong doer fully knows his landlord cannot oust him without paying for improvements. A., a well-to-do man, takes a lease of B. for six bighas of land, stipulating that he shall be liable to ejectment should he sink a well in it. Soon after taking, A. sinks an artesian well, which costs him Rs. 5,000. Now if B. sues A. to eject him, he cannot succeed without paying the sum of Rs. 5,000." There is much force in this argument.

13 There is no serious objection raised with regard to the provisions contained in the remaining sections of the chapter, for they are almost identical with those of the present law, or are improvements on it. Section 23, clause *b*, limits the enhancement by basing the calculation upon a reasonable average of years. Instead of leaving the point to the discretion of the court trying the enhancement suit, both parties have a right to ask for a rule to secure uniformity. Baboo Upurna would therefore calculate on the produce of the last three years.

Chapter IV, Sections 26 *to* 31.—*Of Ryots who have held land for three or more but less than twelve years.*

14. The landlord class object to the provisions of this chapter *in toto*, and they would have the whole chapter expunged from the Bill. This chapter creates a new class of ryots,

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it is true, with no rights of occupancy, but with privileges which give them a status higher than mere tenants-at-will. The provisions entitling them to one year's enhanced rent as compensation for disturbance, as also to the value of the improvements they may make, are most disliked by the landlords.

15. The Government Pleader observes—

"I do not see any necessity of creating a class of ryots with *quasi* rights of occupancy by virtue of their holding for three years or more but less than twelve years The privilege with which the Rent Bill hedges in such tenures practically confers on them the non-liability to ejectment. If the landlords on ejecting such ryots are bound to pay a sum equal to the increased rent of one year as demanded in the notice as compensation for disturbance, and also to pay compensation for any improvements which the ryots may have made on the land, virtually and practically the zemindars will never attempt to raise the rents of such ryots; and the effect of it would be that between the fourth year and the twelfth year of the tenancy of such ryots, there will be no enhancement of rent, even if the lands have been let out at the outset at a very low rent. I would suggest that the status of such ryots ought not to be raised and let them remain what they are. If the Bill be passed, as it stands now with regard to these ryots, it would unnecessarily increase litigation and engender bad feelings between ryots and zemindars, as it will be the interest of the zemindars to be always on the look out to evict such tenants before the end of three years."

16. Baboo Upurna Chunder Dutt endorses the above views and proposes a compromise. "But even if the legislature should persist in making an intermediate cla-s, the number of years which should create such a right ought to be at least half that by which the full right of occupancy is acquired."

17. The Tumlook Sub divisional Officer is of opinion that the Collector's table of rates should govern the rents of this intermediate class of ryots, and that these ryots should not be made to pay higher rates.

18. The Sub-divsional Officer of Contai is the only officer who is in favour of this chapter, and who would extend the provision as regards compensation to even tenants-at-will, fixing a maximum limit of such compensation. His reasons are not cogent enough for quotation here. I think this chapter should be altogether omitted from the Bill, as it gives almost better privileges to this class of tenants than to those having rights of occupancy, and as it will give rise to much litigation and be a fruitful source of creating bad blood between landlord and tenant.

19. Contracts entered into among parties should be binding on them in all respects, except that a contract should not stand in the way of a ryot acquiring a right of occupancy after twelve years' occupancy, even where there is a special condition to that effect.

20. The provisions of the Bill as regards enhancement contained in chapter III are salutary and have my approval.

Chapter V, Sections 32 *to* 35.—*Of Ryots who have held land for less than three years.*

21. There is no great objection to the provisions of this chapter. Landlords would, however, like to eject these tenants without the intervention of the civil court. But I think such intervention will do more good than harm.

Chapter VI, Sections 36 *to* 42.—*Of the use of land for building purposes.*

22. The provisions contained in this chapter are novel and disliked by the zemindars.

The Government Pleader says—

"No ryot ought to be allowed to erect a brick-built house and dig tanks within his holding without the landlord's permission, unless he has acquired a right of occupancy in the holding. This is the more necessary, as very stringent provisions have been made, operating very hardly on zemindars, in preventing the conversion of ordinary tenures."

Baboo Upurna says—

"The erection of a brick-built house is more strongly objected to, as it is likely to place the landlord at the mercy of the tenant." Some objection exists as regards the percentage fixed in the penultimate sentence of section 42. Some would have the rate to be determined by competition, and some would have the same procedure as in the case of enhancement of ordinary agricultural holdings. My own views are in accordance with those of the Government Pleader; and as regards the percentage I think the one adopted by the Commission is fair.

Chapter VII, Sections 43 *to* 45.—*Of Merger.*

23. The only officers who have offered any opinion on this chapter are the Government Pleader and the Sub-divisional Officer of Ghatal.

The Government Pleader says—

"The chapter on merger is, I think, the best of all the provisions of law in the Bill, and I fully agree in every section of it."

The Ghatal Sub-divisional Officer says—

"The landholders doubt the propriety of the new doctrine of merging in the paramount title of the state introduced by section 45."

In my opinion the provisions are good and will prevent much trickery that is now employed by landlords of different degrees.

Chapter VIII, Sections 46 to 54 —Of the Registration of transfers of Tenures, &c.

24. No objection to the provisions is apparent, except that the fee mentioned in section 50, clause *d*, is rather high, and that the fee in section 47 is rather low. These are objections of an unimportant nature and deserve mention merely.

Chapter IX, Sections 55 to 64.—Of rent, &c.

25. Several alterations and amendments have been made in the law relating to the deposit of rent.

The Tumlook Sub-divisional Officer observes—

"—One month and not 15 days' time should be allowed to the zemindars to take out the rents deposited to their credit. Fees in cases of notices issued to the zemindars should also vary according to the amount deposited. There might be numerous instances in which a ryot deposits one rupee or less; in such cases the zemindar will be a loser if he is to pay one rupee talabana for the notice." Baboo Upurna Chunder Dutt says 15 days' time is "too short to be of any use to the person to whose credit the amounts are placed."

The Ghatal Sub-divisional Officer observes: "In cases of agrarian disturbance, refractory tenants would never deposit the full amount due by them. A penalty clause in the shape of compensation may conveniently be added to it. A landlord may on proving his claim to a greater amount take advantage of it. Proceedings under section 191, Indian Penal Code, generally break down in such cases."

26. The Bill provides for deposit of rent in several cases instead of one as in the existing law, and transfers the duty of receiving these deposits from the civil courts to the revenue authorities. The only condition on which rent is now allowed to be deposited, viz. refusal by landlord of tender of payment of rent by tenants, has, experience shows, been much abused by tenants. I would not unnecessarily increase the conditions under which deposit may be made, on the principle that such deposits do not indicate a healthy relation between the landlord and tenant. The effect of the provisions in the Bill, if passed into law, would be to abnormally increase deposits of rent; and the Collectorate treasury establishment would hardly be able to cope with the work. We know how great the press of work is each revenue kist time, consequent on proprietors coming in crowds to pay revenue and cess. The labour of examining applications for deposit of rent, of examining and accepting the money tendered, of preparing lists of such deposits for affixture in some conspicuous part of the cutcherry-house, of paying the amounts to landlords when demanded, of determining the proper party to whom the money is due, of issuing 15 days after deposit notice severally on the defaulting proprietors would be too much for the revenue establishment to get through. Then, again, the question is who is to pay talabana for these notices—the landlord or the tenant? Apparently the landlord, because the deposit is the outcome of his refusal to receive money, or of there not being a common manager, or of the ryot not knowing to whom rent is due. But this penalty if it falls on the landlord will be very hard, especially in cases where the rent deposited is not greater than one rupee, the amount of talabana due on each notice.

27. The Government Pleader suggests "that the notice of deposit be served upon the landlords as it was hitherto done, instead of hanging a notice in the cutcherry, to be taken notice of or not by zemindars or their men. Many absentee zemindars have no agents in town or sub-divisions to look after their interests."

28. The land registration operations determine the several proprietors with the extent of interest of each. The ryot is now under no difficulty in ascertaining where there is or is not a common manager, who are his landlords, and in what proportions. Under section 77 of the Land Registration Act a notice is issued on the estate giving all the information the ryots require. But this is as regards estates and not tenures or under-tenures. It is to these latter only that the amendments and alterations ought to apply and not estates.

29. Section 56 of the Bill contains in the penultimate clause a provision to the effect that no interest is to be decreed on arrears of rent if the ryot can show that he was prevented by causes beyond his control from paying the rent in due time. Baboo Upurna says this provision "would cause much inconvenience to landlords and tenure-holders. Ryots in every case would take up the plea that they were prevented by sufficient cause from payment; and while the landlord will be compelled to pay on the due dates, he shall be deprived of the only safeguard against any irregularity. The poverty of the payee, want of rain, inundation, or other causes would be taken in plea, while his landlord would find no such excuse in them, being probably bound by agreement to the effect"

30. The provision about distraint of crops has very wisely been withdrawn from the Bill though to the great disgust of the landlord class; for the zemindars used to have recourse to this measure of distraint "with ulterior motives, and never perhaps with a view *bonâ fide* to realize their arrears," as the Government Pleader says.

31. With regard to the payment of rent by kists, I endorse fully the view of the Government Pleader, who says—

"I approve also of abolishing altogether the practice of realizing rent by monthly kists, but I would propose that the four kists which the present Bill provides for, be so arranged that they fall a month earlier than the kists for payment of Government revenue. This is necessary to allow time to the zemindars to realize their arrears due from the

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ryots to pay Government revenue. As at present arranged, with the exception of a single kist, all the other kists fall only ten to twelve days before the Government kist."

32. With regard to the particulars to be entered in the receipts for rent, as in section 57, the Government Pleader makes a very useful suggestion that the annual rent payable by the tenant should be shown, and that on the back of the counterfoil should be entered the amounts paid by the tenant, both in words and figures, to be signed by the tenant if literate, or, if illiterate, by some body for him, not the zemindar's amla

33. The other provisions of the chapter are salutary and require no comment.

Chapter X, Sections 65 to 70.—Of Coparceners.

34. No comments are called for, as the provisions are beneficial to all parties.

Chapter XI, Sections 71 to 80.—Of some miscellaneous rights of Landlords and Tenants.

35. The only sections in this chapter to which objection has been taken are 77 and 79, clause 4. Section 77 empowers the ryot to make certain improvements mentioned in section 29, and to cut down trees planted by himself or his predecessor in title. As regards the improvements alluded to in section 29, comments have already been made in the proper place. It remains therefore now to criticise the provision about ryots' right to trees. In most districts in Lower Bengal the right to trees is owned half-and-half by landlords and tenants. To give the right to the ryots exclusively would be an infringement upon rights established by custom. The Government Pleader says—

"I think the vested rights of landlords to the timber grown upon their ryots' holdings according to the usage and custom of the country ought not to be interfered with; vested rights ought to be respected. Let the law since the passing of the Act confer the right to the growing timber upon the ryots."

36. "The Sub-divisional Officers of Ghatal and Tumlook object to clause 4, section. 79. The Tumlook Officer says—

"In case of a tenant abandoning his land, clause 4, section 79, provides that his tenancy cannot be considered as determined, unless after the expiry of a year from the date of his abandonment. The landlord cannot but be a loser of one year's rent by this provision. In cases when the ryot serves a notice upon the zemindar, intimating his intention to come back and re-occupy the land within a year, the tenancy may not be considered as determined. In case of his failure to do so, the landlord is at liberty to lease the land to a new tenant immediately on his abandonment of the same."

37. There is no objection to section 80 or any other section of this chapter.

Chapter XII, Sections 81 to 86.—Of special provisions for Behar.

38. This is a special chapter for Behar. But opinion is asked if sections 84 and 85 might not apply to Bengal too. None of the officers I have consulted have offered any opinion on this point. But I think section 84 may be made general, and there is no necessity for section 85 in Bengal

Chapters XIII and XIV, Sections 87 to 94 —Damages, Penalties, and Limitation

39. No comments are necessary.

Part II, Chapter XV, Sections 95 to 132.—Enhancement Procedure.

40. All the officers I have consulted take objection to the concurrent jurisdiction of the civil court and the Collector in these enhancement suits

The Tumlook Sub-divisional Officer says "section 95 gives the option of the institution of suits of enhancement either in the civil court or revenue court. The institution of any particular class of suits should be confined to one court only. Decisions in similar cases by two or more officers of different departments, but of the same locality, may often be conflicting and result in anomaly."

The Government Pleader says—

"I would take away the concurrent jurisdiction of the civil courts in such matters and would have it only limited to the Collector."

Baboo Upurna thinks—

"But proceedings before the Collector are likely to prove much more expensive than seeking enhancement in a civil court, and the proceedings before the Collector would not be resorted to unless the landlord intends to make a wholesale enhancement of rent of all the jotes within his zemindary; and then only in case of extreme necessity."

The Ghatal Sub divisional Officer says—

"The civil court is the proper tribunal to decide such cases once for all. The preparation of a table of rates and a settlement jummabundi is entrusted to the Collector. This will remove all main impediments in the way of the speedy decision of such cases In fact, the revenue authorities by performing the most intricate and difficult task in connection with the determination of classification of lands and rates will render material help to the civil court in the decision of the cases"

41. I am against this concurrent jurisdiction. I would have either the civil court or the Collector to decide all enhancement suits; and by preference the Collector.

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Chapter XVI, Sections 133 *to* 146.—*Of the recovery of arrears of rent in certain cases by summary sale without decree.*

42. The only objection taken to this chapter is that by Upurna Baboo on section 135. He observes: "This section ought to be made more clear, *i. e.* it ought to be distinctly enacted that in estates where the Amli year prevails, the application for sales provided by this section should be made on the first day of the seventh month of the year. The ruling in the case of Pittambur Panda (a Midnapore case) ought to be incorporated in this section now that it is going to be re-enacted"

Chapter XVII, Sections 147 *to* 164 —*Special rules, &c.*

43. No remarks.

Chapter XVIII, Section 165, *to end*

44. The Tumlook Sub-divisional Officer observes—

"Section 175 provides for the arrest of defendants before judgment. This will be very harassing to the ryots, specially in cases where the zemindar has a personal grudge against them." I think such a provision is necessary, leaving the court to exercise its discretion and issue the warrant of arrest in extreme cases only.

45. With regard to the sale of tenures with encumbrances, the Government Pleader says such sales "would practically be inoperative; hardly bidders would be found to purchase tenures. It would only complicate and delay the realization of arrears after decree"

46. With regard to some of the other points in this chapter the Government Pleader observes—

"Regarding the procedure for the trial of ordinary rent-suits, I would suggest only that the deposition of witnesses in all appealable cases should be recorded *in extenso*. Giving the right to appeal without having the depositions of witnesses recorded in full would virtually take away the right to appeal.

"As regards the power to appeal, I would extend it to every case in which the question of relationship of landlord and tenant is disputed."

Baboo Upurna suggests that there should be a provision in the Bill that ryots should be made to deposit rent before they are allowed to contest a suit for arrears of rent I think this is looking at the subject rather too much from a landlord's point of view.

R. M.—Reg. No 10690J - 132 -20-1-81

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No. 2524A, dated Cuttack, the 28th December 1880.

From—A. SMITH, ESQ., Commissioner of the Orissa Division,

To—The Secretary to the Board of Revenue, Lower Provinces.

WITH reference to your No. 659A, dated the 30th July last, I have the honor to submit the following remarks.

2. The draft Bill is not intended to apply to the temporarily settled province of Orissa, unless specially extended thereto, and I would not advise this being done until after the next settlement in 1897. It need not now be determined if it will be advisable then to introduce the Act provided it is passed.

3. As the territory now known as Orissa is altogether different from that which was so designated in the Regulations at the time of the Permanent Settlement in 1793 and did not come into our possession till ten years after that date, and is still temporarily settled, I would advise that the language of section 6 of the Act be modified. The Orissa of the Permanent Settlement was the district of Midnapore, and in sections 37 and 39, Act VIII of 1793, the two names are interchanged. The tract now known as Orissa came into our possession in 1803, and in the laws of that period (*see* Regulation IV of 1804, Regulations XII, XIII, XIV of 1805, and several others of later date), it was spoken of as the province or zillah of Cuttack.

4. The report of the Commission is one of very marked ability, and the papers published in the second volume throw much light on the early history of the Permanent Settlement, and on the intentions of those who framed that great measure. A complete vindication of the action of the legislature in respect of the charge so often made to the effect that Act X of 1859 was an infringement of the proprietary rights reserved to the zemindars by the settlement is given in Mr. O'Kinealy's historical note, and more particularly in the extracts given therein from the Minutes of Lord Cornwallis, and paragraphs 31 to 33 of the letter of the Honorable Court of Directors given at page 442.

5. The Honorable Court, while confirming to the zemindars the possession of the districts held by them, and disclaiming interference with respect to the situation of the ryots or the sums paid by them with any view of addition to the Government revenue, distinctly reserved the right belonging to them as Sovereign, of making from time to time all such regulations as might be necessary to prevent the ryots being improperly disturbed in their possession or loaded with unwarrantable exactions. The Court, observing that it was the practice of the Mogul Government that the immediate cultivator of the soil should not be dispossessed, duly paying his rent, held, that in consequence there were some measures and limits by which the rent could be defined, and that it was not left to the arbitrary determination of the zemindar; the Court further noted that the amount seemed to have been annually ascertained and fixed by the act of the Sovereign.

6. It was, then, clearly the intention of the Honorable Court that the ryots should not be improperly disturbed in their possession. A declaration of a right of occupancy was the legitimate sequel to this resolution. The right was in fact held to be at the time existing, and a formal declaration of it was within the right reserved to the State. Similarly, it was declared that the Government reserved to itself the right of interposing from time to time to prevent the ryots from being burdened with unwarrantable exactions. This was no doubt at the time more immediately directed to the abwabs and cesses exacted over and above the customary rent and declared illegal at the period. It is, however, quite a legitimate construction of the intentions of the Court that the rents themselves were not to be arbitrarily altered by the zemindars, for it was clearly declared that the ryots were not to be loaded with unwarrantable exactions; and excessive rents, that is, rents over and above what is fair and equitable, are as much unwarrantable exactions as cesses.

7. I do not think that Mr. O'Kinealy's interpretation of section 52, Regulation VIII of 1793, can be accepted, or that the section referred only to the letting to farmers. The use of the expression "remaining lands," that is, the lands remaining after the portion dealt with in section 51 (the portion held by dependent taloukdars), to my mind clearly shews that section 52 has a wider interpretation, and embraces not merely the lands to be let to farmers, but those to be let to ryots also. Both lettings were to be subject to the prescribed restrictions. Section 53, which Mr. O'Kinealy considers to contain the prescribed restrictions, contains but one restriction; and though it is not unimportant, it is certainly not one which alone would have deserved such prominence as the section gives to the restrictions, nor is it easy to see why, being but one, it should have been spoken of as restrictions in the plural. Section 54 and subsequent sections prescribed restrictions for the letting to ryots, and these must also, in my opinion, be understood as referred to in section 52. The zemindar was not permitted by section 54 to impose any new rent. He was to take account of what had been previously paid in the shape of *asul*, or original rent, and cesses, and to consolidate the whole into one specific sum which was to be the future rent, and he was prohibited by section 55 from imposing any new cess. By section 6, Regulation I of 1793, it had been proclaimed that the zemindars were to conduct themselves with good faith and moderation towards their dependent taloukdars and ryots, and in section 8, Regulation I of

1793, it had been proclaimed that the Government would, whenever it deemed proper, enact such regulations as it thought necessary for the protection and welfare of the dependent talookdars, ryots, and other cutlivators of the soil. If at the present time this language does not, in direct terms, convey an intention of interfering to limit the zemindar's demand, a perusal of the recorded proceedings of the Government of the day leaves no doubt that it was intended to convey it. Further-more, if we consider the customs and usages of the time, I have no doubt that it was so understood by the zemindars to whom it was addressed.

8. While the Government has reserved to itself the right to interfere to protect the ryot from being improperly dispossessed, and from being loaded with unwarrantable exactions, it is, however, incumbent on it, as the common Sovereign of both, to see that in its interference it respects and considers the equitable rights of both. Nearly a hundred years have passed since the time of the Permanent Settlement. The power conferred on the zemindars of selling their estates has been largely used, and money has been largely invested in this description of property, with regard rather to existing usages than to old and forgotten Minutes recorded in Government offices. Neither the ryots nor the zemindars of the present day have, as a rule, had much regard in their dealings to the Minutes of Lord Cornwallis, although the usage of the time, under which the ryot is to pay only a fair and equitable rent, is in accordance with its spirit.

9. It appears to me that any legislation to be now adopted should be directed towards facilitating the ascertainment of what the fair and equitable rents are, rather than to any extensive adjustment and alteration of existing relations, and a measure of this sort would, I have little doubt, prove acceptable to both tenants and landlords.

10. The present draft Bill proposes very important changes in the law, and though they are all of them within the powers the legislature has reserved, the expediency of adopting some of them under existing circumstances may be questioned.

11. With these preliminary observations I now take up the consideration of the draft Bill, and will deal with the subjects mentioned in the enclosure to your endorsement in the order in which they are mentioned therein. This order follows generally the arrangement of the Bill, and notice of subjects not mentioned in the Government letter will be made in accordance with their places in the Bill.

12. By Act X of 1859, tenures held at a fixed rent from the time of the Permanent Settlement, and ryots who had held at fixed rents from that period, were protected from enhancement, and payment at a fixed rate for 20 years, if not rebutted, was made presumptive proof of holding from the time of the Settlement at the rate indicated. These privileges have been maintained, though some of the members of the Commission appear to have been inclined, in the zemindars' interest, to question the propriety of retaining the 20 years' presumptive rule. It would not, in my opinion, be advisable to change it, and I imagine there is so little danger of this being done that it is unnecessary to discuss the question.

13. The law lays down rules for the enhancement of tenures liable to enhancement. The rent may be enhanced up to the customary rate payable by persons holding similar tenures in the vicinity, or in the absence of such customary rate, to whatever rate the court shall decree fair and equitable, provided that the profits of the tenure shall not exceed 30 per cent. of the difference between the gross rents and the collection charges, and provided also that in no case shall the rent be enhanced so as to exceed double the previous rent.

14. Such tenures originate in various ways. A tenure is sometimes created by the zemindar over ryots holding cultivated land, to save himself the trouble of collection. In such a case the reasonable profits of the tenure are what would be a fair remuneration for the labour and risk of collection. Thirty per cent., after deducting the cost of collection, would be a very excessive allowance for such a tenure. Other tenures are granted for clearing jungle, reclaiming waste, and the like, to be held for a long term free or at a low rent, the subsequent liability being sometimes well-defined and more commonly left rather indefinite. In such cases the fair rent should leave to the tenure-holder not merely a return for the labour and risk of collection, but a reasonable interest on the portion of the capital spent and remuneration for labour incurred, not reimbursed by previous profits during the time the tenure was held on favourable terms. Tenures are, again, created on payment of a consideration or premium to the granter. In such cases the interest on the premium is a legitimate consideration in determining the equitable rent. Section 8, Regulation V of 1812, allowed 10 per cent. where the Committee propose to allow 30. It certainly appears to me that for any but very exceptional cases 30 per cent. is much too high. If that percentage is retained, the case in, and the condition according to which it may be given, should be more clearly defined in the law for the guidance of the courts. The matter should not be left to be determined according to the idiosyncrasies of individual officers.

15. Neither in the case of ryots nor in that of tenure-holders do I see any reasonable ground for limiting the enhanced rent to double the previous rent. If the land or the tenure be held at an unduly low rate, there appears to me to be no reason why the rent should not be raised to the fair and equitable rate, but in such cases the increase should be gradual and I would not limit the term of progressive rent to five years where the increase is more than double.

16. The extent to which the holder of a tenure liable to enhancement should be authorized to create under-tenures without the consent of the superior holder is a very important

question. A landholder grants a tenure liable to enhancement with, say, a profit of 10 per cent. on the rents of the cultivating ryots. Thirty years hence, the land has improved and prices have more than doubled. The landholder seeks to obtain his legitimate share of the enhanced rates; the ryots on the whole pay twice the rent they paid before. It is found that the tenure-holder has created these under-tenures of the first degree, and they have again created under-tenures of the second degree. Let us say that the ryots paid originally Rs. 100, and the tenure-holder kept Rs. 10 and the zemindar got Rs. 90. He comes to enhance the rent of his under-tenure, the ryots on our supposition pay Rs. 200, and the tenure-holder ought to keep Rs. 20 and pay Rs. 180. The effect of the creation of the new tenures, is that the under-tenureholders of the second degree will take, say, 10 per cent. or 20. The under-tenureholders of the first degree will take 10 per cent on Rs. 180, or, say, Rs. 18 leaving Rs. 162, and the tenure-holder will take 16 and the zemindar will receive Rs. 146 instead of Rs. 180. I have taken 10 per cent. of his receipts as the rate each will keep, as it admits of an easy calculation. The actual rate according to Regulation V of 1812 would be the charge per cent. for collection *plus* 10 per cent on the difference between the charge and Rs. 100, or, say, if 10 per cent. be allowed for collection.

17. The example, however, shows the depreciation of the landholders' interest by the creation of under-tenures, and that is the point to which I wish to direct attention. It seems scarcely reasonable that because a landholder has created a tenure-holder between himself and the ryots, he should be liable to have his interest depreciated in the above way without his consent. The draft Bill views with great disfavour the grant of farms, and puts farmers under special disabilities in the matter of enhancement proceedings A wise zemindar will, however, as the law stands, do well to farm if he cannot manage directly.

18. *Chapter IV* of the Bill creates what may be regarded as a modified right of occupancy for ryots who have held for more than three years, and have not held for twelve years and have in consequence not acquired the full occupancy right. The incidents of the new tenure are peculiar. The landlord may enhance the rent on any terms he thinks fit, and if the holder does not agree, he may relinquish the land and will be entitled to a year's payment of the enhanced rent demanded by way of compensation for disturbance of his possession. Similarly, the tenant may claim abatement on certain defined grounds, and if the landlord does not agree, he may leave the holding, and is not only not bound to pay the landlord a year's rent as compensation for the disturbance in his arrangements, but the landlord is bound to pay him a year's rent at the unabated rate. It seems to me that this compensation should be altogether struck out in both cases.

19. The ryot, whether he relinquishes, because the landlord claims enhancement, or because he refuses abatement, is also entitled to compensation for improvements. Even if he be evicted on wilfully breaking conditions he had bound himself to observe on pain of eviction, he must receive this compensation. This seems rather setting a premium on wrong-doing. If he leaves in consequence of refusal of abatement, any deterioration of the holding caused by his act may be taken into account. It seems to me that this should be taken into account in both cases. I think compensation for improvements in the case of refusal to pay enhanced rent demanded reasonable; but I would limit the compensation to works on a scale suitable to the nature of the holding. I would not, for instance, allow value for a brick-built house on a holding of a few beegahs.

20. From the chapter itself it would appear that the ryot is not entitled to hold the land if the landlord does not agree to his claim for reduced rent. From section 153, however, it appears that he may sue for the abatement. It seems to me that it is inexpedient to burden the courts with suits of this kind, and that it would be well to leave the tenancy entirely one of contract, till the right of occupancy accrues. I am not clear that adequate reason exists for reducing the terms needed for the accrual of such a right; but I would rather reduce the term to three years than create the mongrel description of holding the draft Bill proposes between three years and 12 years of occupancy.

21. In the matter of enhancement and relinquishment notices, it would, I think, be well to consider whether they should not uniformly be served in or before Pous, and similarly whether enhancement and abatement suits should not be filed in or before Aghran. The agricultural year is, I believe, everywhere much the same, and begins with the preparation for the early rice crop about Bysack. A notice served in Joyst may find the ryot with part of his preparation done and perhaps even with his land sown. The notice to quit to the tenant-at will, section 33—2, should also, I think, be served uniformly in Pous for the same reason. As the grounds of enhancement of these tenants is not limited by the Act and may not be disputed, there seems no reason for requiring the notice to shew them.

22. The occupancy ryot of the draft Act is something different from the present occupancy ryot. The old occupancy ryot, whose tenure comprised more than a hundred standard beeghas becomes, under the draft Act, a tenure-holder or under-tenureholder. There will also be occupancy ryots under occupancy ryots to such extent as the maximum area of the holding, 100 standard beeghas, will permit. It may be here noted that the definition of rent, apparently from oversight, does not include rent paid by one occupancy ryot to a superior occupancy ryot. It seems to me that the object originally contemplated in limiting the size of the occupancy holding by statute must have been to get rid of the difficulty arising from grades of occupancy holdings. The maximum area of an occupancy holding having been fixed at

100 standard beeghas, it seems unnecessary to allow fresh occupancy rights to accrue under it. If it be considered that 100 beeghas is too large, I would rather see the maximum occupancy tenure reduced to 50 beeghas than permit occupancy right to descend in degrees as tenures do. I have already indicated the injustice to landholders and superior tenure-holders arising from the unrestricted creation of under-tenures by the proprietors of tenures and under-tenures under them. There is precisely the same difficulty with regard to occupancy ryots. If the zemindar, or first tenure-holder, is entitled to demand from the first grade of occupancy ryot the fair and equitable rent an occupancy ryot should pay, the lower grades of occupancy ryots must pay him more. If occupancy ryots of the third or lower degree have to pay more than the rates in the Collector's table of rates, what becomes of the table? If they pay according to the table, the superior grades of occupancy ryots must pay less, and the zemindar must receive less. The Bill does not provide a procedure for determining what the different grades of occupancy ryots it creates should pay, though in the case apparently of the holders of the first degree, clause *c*, explanation 3 of section 19, provides a special limit of enhancement. It says nothing of occupancy tenures of lower degrees, and apparently does not take account of them at all; if an occupancy right accrues under an occupancy right they may extend to any degree. It seems to me that we should allow the under-tenants of occupancy ryots to remain as they at present are, tenants-at-will.

23. I see no objection to the grant of the right of occupancy to the tenants of large istemrardars and mocurrardars, but in the case of small tenures of that class, and small lakhiraj tenures, the accrual of such rights will materially affect the position of the owners. In the case of small endowments the trustees of which sublet, the value of the property will be materially affected.

24. I would not permit the landholder to prevent by contract the accrual of a right of occupancy. It appears to me that it is very desirable to have the agricultural population prosperous and comfortable, and I would not permit the landholder to make engagements that will keep the tenant a perpetual tenant-at-will. The point is, however, one of much difficulty, and further remarks will be made on the subject when the question of the sale of occupancy tenures for their arrears is being considered.

25. The proposal to make the occupancy tenure saleable for its own arrears has been generally accepted, and I do not think I need say anything further on that point. There is also I believe no general objection to the sale of the tenure by private contract. The Bill provides that it shall not be saleable in execution of decree except for its own arrears, and that it shall not be mortgaged. The object of these provisions is the laudable one of protecting the ryot against the consequences of his own improvidence. That they will be very effectual may be doubted. The force of social usages is very great, and they compel the ryot at times to get money at almost any cost. Inability to offer good security necessitates a high rate of interest, and it may be accepted as certain that one consequence of the restriction will be that, the much abused mahajun who now lends at high rates in consequence of the insecurity of his principal, will lend on rather harder terms than he would if the tenure could be pledged. The difficulties in the way of executing a money decree are, as everybody who has had it to do knows, very great in this country. Under section 266, Act X of 1877, the wearing apparel of the ryot and his household, the implements of husbandry and cattle, the materials of his houses and other buildings occupied are already barred to the mahajun who lends. The tenure being also barred to him, it is thought that the ryot will find it very difficult to induce the mahajun to advance and must pay high. He can of course pledge his crop, but that is uncertain, and the only resource is higher interest. Again, it is thought that the ryot being unable to mortgage, and being at the same time unable to do without the money, will sell to the mahajun and become his tenant-at-will. The right of occupancy will be a very valuable form of investment, and mahajuns will buy them readily, particularly if they can by a stipulation in the lease prevent their again accruing. There is much force and much truth in all these pleas, but it must be admitted that inability to get money often compels economy, and that a ryot will mortgage who would not sell. I incline therefore to retain the clauses in question.

26. I should not be inclined to allow a ryot with a right of occupancy to be ejected for breach of any of the stipulations of his lease, but I would allow the holding to be sold in execution of any decree for damages on account of such a breach.

27. The limit of half the crop in ordinary staples, and of one-fourth in valuable crops reared with extra labour and cost, where there is no special agreement, seems fair; so the proposal to limit the rent in ordinary cases to one-fourth of the average value of the produce seems reasonable. I would not, however, interfere with existing rents; when higher I would allow abatement to these rates as limits and enhancement to them as limits on the prescribed grounds.

28. Looking to the grounds of enhancement, I find in clause *e*, section 24, what appears to me a somewhat remarkable proviso to the effect that where enhancement is granted on account of increased prices, the ryot shall be entitled to a reduction equal to the amount of his annual payment to the Road Cess, Public Works Cess, and the like. The reason for this is given at paragraph 57 of the Committee's report, and it is, that part of the improvement may be due to the ryot's contributions to

these cesses. As, however, the zemindar and ryot contribute equally to these local rates, the increase will be due in equal proportions to their contributions. The ryot takes usually the larger part of the produce. The Bill suggests that he should get three fourths, and the zemindar one-fourth. He will therefore, even if his rents are enhanced in proportion to the increased value of the produce, retain by far the larger share of the increase to which the zemindar has contributed in exactly the same proportion as himself. Instead of obtaining the reduction the Committee proposes to give him, he ought in equity to pay more.

29. The proposal to concede the right of occupancy in non-agricultural land requires very careful consideration. Under section 41 it appears that a tenant in the immediate possession of land used for building for 12 years acquires a right of occupancy in it and is not liable to be ejected and may in fact sell it. I see from the note opposite section 1, that the question of extending the Act to Calcutta is to be considered. It is to be hoped for the sake of the owners of house-property in Calcutta that, if it is so extended, they will take warning and bar the accrual of such right by an addition to their leases. Otherwise, some rather serious complications are likely to ensue.

30. Building land, particularly in towns, is very valuable property. I think the use of it may safely be left to be regulated by contract. A right of occupancy in it should, in any case, not be permitted to accrue to any one but the owner of the building.

31. I see no objection to permitting the ryot to build suitable dwelling-houses and out-offices for himself and his family to such reasonable extent as they may require without permission from his landlord. Beyond this I do not think it advisable to go. I do not think the ryot should be permitted to apply the land to purposes not contemplated by the letting without obtaining the landlord's consent. The necessity for this is well known, and section 36 gives a legal validity to the prevailing practice. The tenderness to the ryot in the provisions of sections 38 to 40 seems rather of the nature of encouragement to wrong-doing. I would require the ryot before applying the land to the purposes indicated to obtain the landlord's consent in writing, or if he fails, to serve a notice on him through the court, and if the landlord consents, or does not within a fixed time intimate his refusal through the court, I would allow his consent to be presumed. This would reduce the probability of ultimate dispute. If the sections are permitted to remain, a definite period should be substituted for the reasonable time mentioned in sections 38 and 39.

32. The wording of section 42 requires amendment. As it at present stands, it appears to permit enhancement only if the rent was not enhanced within 10 years from the time the right of occupancy accrued. If it was enhanced within that period it is apparently to be held for ever at the rate payable at the time the right accrued. If the right is to be permitted to accrue at all, I would certainly allow enhancement to the rates paid by other tenants in the neighbourhood for land with similar advantages.

33. Land being generally sold with its liability to rent, it will be rather difficult to find a market value with which to compare the rent as proposed in the concluding portion of section 42. Having regard to the general rate of interest paid on money on the security of land, 5 per cent. seems too low, and I would be inclined to substitute 8 per cent.

34. Sub-infeudation does not prevail to any great extent in Orissa, and the chapter on merger will be of no particular importance here. The provisions appear equitable, and so far as they go, will be of use in checking the abuses connected with the frandulent uses sometimes made of under-tenure rights in Eastern Bengal. I will notice hereafter the effects of this chapter on the sale of rights of occupancy for their own arrears.

35. The provisions for the registration of transfers of tenures, under-tenures and occupancy holdings of the different degrees in the serishtas of their several landholders would be eminently useful if they can be carried out. The difficulty we have recently experienced with our intelligent amlah in preparing correct registers in respect of the large and valuable properties known as estates, ought to convey some idea of the labour needed to obtain correct registers in respect of the smaller interests—many of them very small interests—in the serishtas of their landlords, many of them being also very small and very ignorant. In the case of tenures the difficulty will be comparatively small, but in the case of occupancy holdings it will be very great. No provision appears to be made as to what is to be done when the transfer is disputed, and our experience in the matter of estates tells us this is likely to be by no means unfrequently the case. It is not stated whether the transferrer or the transferree is to pay the fee. In the absence of specific agreement on the point, the fee should be declared payable by the transferrer. Again, it is not clear what action the landlord is to take if a notice of transfer is given him and he is not clear in his own mind about the truth of it. A person alleging himself to be transferree gives him notice of the alleged transfer, and claims registration. The landlord may be doubtful, but there is no provision for his calling on the alleged transferrer and finding out whether he admits the transfer. It is, I presume, not intended by the declaration of the personal liability of a transferrer at a private or execution sale not being for the arrears of the tenure if he does not give the landlord notice, to free the tenure or holding itself from responsibility. This should be made clear.

36. The tenure is generally sufficient security for its own rent, and I see no very good reason for the present practice of demanding such security from putnidars. I think the demand may be abandoned without any practical inconvenience.

37. In the opening portion of Chapter IX of the draft Bill an effort is made to free the tenure-holders and ryots from the vexation caused by the number of instalments into which their rents are usually divided. Custom and contract are to be respected in the case of the rents of tenure-holders, but in the case of ryots the rents are to be payable in four quarterly instalments, and regard is to be had to contract or custom in so far only that the instalments in accordance with them are made payable on the first day of the last month of the quarter of the year in which they fall due. Admitting the benevolence of the intention, I doubt the wisdom of this proposal. Ryots are improvident, and when they have money they are apt to spend it. Where instalments have been fixed by custom, and by contract, which generally follows custom, it will be found that they ordinarily have their origin in circumstances which make the dates suitable and convenient to the parties. There is much reason to fear that if the dates of payment are altered as proposed, the ryot will too often spend the money before the quarter-day comes round We had recently in this division to consider the times at which it would be most convenient to our ryots in the Government estate of Khoordah in the district of Pooree to pay their rents, and it was found that it would suit them best to require the payment in four equal portions, on the 15th December, 15th January, 15th February, and 15th March.

38. Section 56 proposes that interest shall be decreed on rent not paid on the due date as fixed by contract or custom or by the law at 12 per cent. where it supersedes contract and custom. If the law alters the dates of payment settled by the parties or by custom it is reasonable to alter the date also from which the interest is to run. It is noticeable that, while section 20, Act X of 1859, and section 21, Act VIII (B.C.) of 1869, reserved to landlord and tenant the right to contract at what rate arrears should carry interest, the draft section 56 withdraws this power and declares that a rate of 12 per cent. shall be decreed in all cases, unless where the ryot has failed to pay from causes beyond his control. Had it not been stated in the report, paragraph 123, that this uniform rate of 12 per cent. was intended to be a concession to the landlords as a solace for the loss of interest consequent on the postponement of the instalments of rent falling due in the first two months of a quarter not made good by the earlier payment of the rent of the third month, I should have supposed it was intended to protect the ryot from the excessive interest sometimes provided for by written agreement. If it is determined to set aside contract when the stipulated interest is over 12 per cent. in the interest of the ryot, it is perhaps expedient also to set it aside in the interests of the zemindar where the parties have agreed to a less rate. If the legislature is to fix a rate, I think 12 per cent. is, considering the ordinary interest of money, a reasonable rate. Contract provides sometimes for less, sometimes for more. In the zemindary of the late Rajah Degumber Mitter in this division, the sub-divisional officer of Kendraparah mentions that the agreements provide for so high a rate as 37½ per cent. It is pertaps not unreasonable to provide against the enforcement of contracts of this sort. The concluding part of the section provides that the interest need not be decreed if the ryot was prevented from paying his rent by causes beyond his control. I do not exactly see why the landlord should be deprived of the interest if the tenant, from causes beyond his control, could not pay his rent when it was due. The proposal does not appear to me equitable. There seems to me no reason why a landlord should be deprived of the interest on his rent which would not apply equally to a debt due to a Calcutta tradesman when the debtor is unable to pay from circumstances beyond his control. The money being due and not having been paid, the landlord should have his interest.

39. The proposals with regard to receipts in section 57 are, like the registration of transfer, good, if it be only possible to get them worked. I must, however, confess that it will be difficult to introduce completely in six years, not to speak of six months, the practice of giving receipts from counterfoil books among the small zemindars, lakhirajdars, and tenure-holders. The proposal to make every superior holder who omits to give a receipt, containing the required particulars liable to punishment, seems to me unduly stringent. I would provide the punishment only where the receipt being asked for was refused. It is probably intentionally that penalty has not been provided for not giving the receipt from the prescribed counterfoil book. I think it will be excessively difficult to get small landlords to provide these books. An occupancy ryot who has one tenant, who pays him Rs. 2-8 or so a year, will think it a great hardship to get a book with 25 receipt forms, even if he gets to know that the law requires it, which he will be long in doing. In this part of the world, too, paper, let alone counterfoil books, has not been introduced into many rent serishtas. Records are written by steel on palm leaves, and those who keep them cannot write with pen and ink. In a Government office which I lately inspected I found such records being made at the present time, and our record-rooms still contain large quantities of palm leaf documents. It would thus be more than ordinarily difficult to introduce these counterfoil books into our small rent serishtas in Orissa, but I doubt if it will not be found very difficult under more favourable circumstances to introduce the system in small estates and tenures in Bengal.

40. I see no objection to the new cases in which it is permitted to deposit rent in the Government offices, nor to the transfer of such deposits in Bengal from the civil courts to the Government treasuries at the head-quarters and sub-divisions of districts. It seems to me, however, that the very limited time allowed, especially in the cases where the deposit

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is not made in consequence of refusal on tender, will make the sections of little practical value. I would strike out the limit of time in these cases and allow a month after refusal of tender. In all cases I would require all interest due up to the date of deposit to be lodged. The office notice will be useful in the case of large estates, but the large number of small landholders and tenure-holders who cannot keep an agent at the treasury will know nothing of it, and in all these cases the special notice will be a matter of course.

41. Section 64 provides for the hypothecation of tenures and holdings for their rent. The old hypothecation of the produce is abolished even in the case of tenants who have no transferable interest in the lands they occupy. In the case of such tenants I am inclined to think that the old law of distraint should be retained. It seems to me that, unless this is done, the landlord has hardly adequate security for his rent. Where the holding or tenure is saleable, it becomes its own security. Such tenures generally sell for a considerable purchase of the rental. In the Government estate of Khoordah in the Pooree district it has been found that ryotee holdings are selling, even while the Government settlement with its enhanced rates is in progress, at Rs. 66 per acre. Throughout Bengal I believe the holding will seldom, if ever, fail to realize a sum that will more than cover four years' rent. The selling value of the occupancy tenure is the measure of the market value of the difference between what the tenure may be made to pay as an occupancy tenure and what it would pay at the rack-rent that would be payable by a tenant-at-will, and the value is consequently a measure of the prosperity of the tenantry. This is no doubt greater in such an estate as Khoordah where the rents were fixed sixty years ago than in ordinary zemindaries, but every where now-a-days the right has grown valuable. An occupancy ryot or tenure-holder will, not if he can help it, allow his property to be sold, and thus the rent will be practically secure.

42. The section provides that till the tenure has been put to sale no other process shall issue. I see no objection to this. It will practically compel the debtor to find the wherewithal and pay. At paragraph 130 of the report the Commission observe that a landlord who wishes to exercise mercy and forbearance is not bound to proceed to the sale of the holding, but may take what the ryot can pay and stay his hand. In making this observation it seems to me that the Commission must have forgotten the very stringent provision in section 211, clause 3 of the draft Act. By that section it is expressly declared that he cannot recover from the proceeds of the sale any rent for more than six months after the final decree. The effect of this provision is necessarily that the landlord is bound in his own interests to see that the sale is effected within six months from the date of the decree. It appears from paragraph 132 of the report that this provision was deliberately inserted, and it seems singular that its effect should have escaped notice as it would appear to have done.

43. The provision in section 207*b* to require the landlord to bid if there be no other bidders seems equitable from the point of view from which it is treated in section 132. In the case of an occupancy holding, however, it should be considered, with reference to the provisions of clauses *a* to *e*, explanation 4, section 19, and the provisions as to merger, section 44, what the effect of the purchase will be. The decreeholder may purchase the holding, but it is practically annihilated by his purchase. The provision will have no other effect. It will put the landholder in a position to deal with a combination among his tenants not to pay rent where holdings are put up and no bid is made, because the ryots combine to prevent sale. He will be able to purchase the holdings for next to nothing and eject the refractory ryots. If, however, a bid is made after the owner's first bid, the zemindar, though permitted to bid by section 208-1, will be in a rather hampered position unless he can make his own terms with his new tenants and prevent them from acquiring rights of occupancy afresh. If any new tenants he may obtain secure the right to hold at the old rates in three years, he cannot increase his rental by the purchase, though of course he can require the new tenant to pay him a premium on entrance to compensate him for his purchase money. The difficulty under which the owner labours will more or less affect every bidder not being a ryot intending to take actual possession, and so far the value of the holding will be reduced, but I have no doubt that it will not be found in ordinary circumstances to be reduced to an extent which will *materially* interfere with its validity as guarantee for its rent.

44. In section 64, it is said, the rent shall be a first charge on the tenure or holding. I understand the meaning of this to be that the tenure or holding is to be responsible for the rent due on it, so far as the same is recoverable by law. If the ownership passes by private sale or in execution of a decree, it will still be saleable for any arrears due on it and recoverable by suit. If this be what is meant, I see no necessity for any such addition to the section as is proposed in paragraph 133 of the report. I think it is reasonable that such liability should attach to the tenure or holding.

45. In the case of coparceners would it not be well to allow a certain proportion of the ryots to move the judge instead of confining the right to the Collector and the cosharers? If occupancy holdings are to be allowed to accrue under occupancy holdings, the provision ought to be extended to such holdings as well as to estates, tenures and under-tenures.

46. I do not think that, as a rule, the Court of Wards should take charge of such estates; but if, under the provisions of section 66-2, the Lieutenant-Governor appoints a general manager for any district, I would permit him to fix his salary and provide for its being charged rateably to the estates he manages instead of leaving it to the district judge to settle. See the opening part of section 67 and the concluding part of section 66-2.

47. I do not see why, in the absence of custom or contract, the ryot should be allowed to cut down trees planted by himself or his predecessor without permission. In many cases the trees planted will have taken the place of older trees passed away, and the value of the holding is likely to be injured by cutting them down. In some, too, the trees affect the rainfall and produce other climatic effects. Where custom requires the landlord's consent I would not alter it.

48. Where a ryot has been ejected by the result of litigation from land he honestly believed himself entitled to hold, his right to the crop he cultivated, (subject to reasonable payment for the use of the land, and damages for loss occasioned by his occupation,) is reasonable. The draft Act prohibits ejectment without recourse to court. It seems probable that this will lead to the occurrence of cases where tenants will hold on without just or reasonable ground, and I should be inclined by way of discouraging such cases not to allow the crop.

49. Where there is a deliberately dishonest disclaimer of the right of a landlord, eviction is not an unfitting penalty, but in this country, where there are so many *benamee* transactions, the courts will require to apply this provision with great care.

50. Where a large estate has been purchased, a year is too short a period for an auction purchaser to examine the condition of the estate and the circumstances of all the tenures. I would allow three years.

51. If the proposal to permit the right of occupancy to accrue generally after three years is approved, there will be no necessity for the special provision in section 81 permitting it to accrue after that period in the case of certain ryots in Behar. It does not appear to me that any of the provisions of Chapter XII are required in Bengal, and I think the proposal in section 86 to allow the ryot to convert his rent from a payment in kind to a money payment without the consent of the landlord is scarcely fair to the latter.

52. Justice is ordinarily painted as holding a balance in which the interests of the claimants are balanced in even scales. It appears, however, from sections 90 and 91 that there is now to be one measure for the tenant and another for the landlord. In other words, the ryot's decree is to bear interest at 12 per cent. and the landlord's is to bear only 6 per cent. This inequality, which did not exist either in Act VI (B.C.) of 1862, or Act VIII (B.C.) of 1869, ought, in my opinion, to be removed. I would call attention to the inconsistency also between the special rate of interest to be paid by landlords under section 91 and the general rate prescribed in section 195*b*. I do not see why interest ought not to be awarded as well as damages for delay in payment. It does not appear that interest is excluded from the sum on which damages may be given in section 91. The provisions, however, follow the existing law.

53. In the schedule of limitations I would reduce the period of limitation in cases 5, 6, 7, 8, and 9 to two months or at the outside three months. These cases are all of the nature of criminal cases, they will depend largely on oral evidence, and it will be but just to both the parties that the cases should be brought while the circumstances are fresh and the witnesses' memories retain them clearly. In cases 10, 11, 13 and 14 the operation of the causes is gradual and the permanence of the effect is not a matter of certainty. The term of one year is much too short. For the corresponding suits of enhancement no term has been fixed and I would not fix any for these. I have already intimated that I think the time in respect of article 16 too short, and I also think the period allowed under article 29 too short. I would allow a year.

54. On the subject of enhancement I have already suggested that, with reference to the agricultural year, suits should be uniformly instituted in Agrahan. For the purpose of the enhancement chapter, landlords are divided into two classes, the landlord with a permanent transferable interest, and the landlord with a farming or lease-hold interest. In past times, owing to the weakness of the administration and the inability of the courts to protect the people, landlords with a farming interest have, it is said, abused their position and oppressed the tenantry. The draft Bill therefore proposes to put such landlords under special disabilities in the matter of enhancement suits. It appears to me that this is unjust to the landholder. I have pointed out in a former part of this report the evils that accrue to him from the creation of tenures and under-tenures, and it seems to me that the grant of farms ought not to be discouraged in the manner contemplated. The courts should be strengthened so as to be able to repress violence and oppression, and the farming and permanent landholders should be equally able to appeal to the law to secure and to retain whatever may be their lawful right. The provision that rent fixed by the courts shall be binding for a term of ten years will prevent the frequent harassment of the tenantry by enhancement proceedings, and if ten years be thought too short a time let it be increased. This can be unobjectionably done in all cultivated lands where there is no disturbing cause. In the case of improving chur lands or the like, the courts might be allowed to grant progressive rates and to fix a term less than that fixed in ordinary cases. In other words, the proceedings may be somewhat of the nature of our revenue settlements. We fix a long term or a moderate one, according to the condition of the estate.

55. The great difficulty in the enhancement procedure is the enormous strain it is likely to throw on the officers, both revenue and judicial. I agree with Mr. Dampier in thinking that, except in the exceptional cases he mentions, the suit should be instituted in the

civil court and should only be transferred to the revenue courts with the sanction of Government. In all cases of extensive dispute, however, it may, I think, be regarded as inevitable that the intervention of the revenue authorities will be required. The litigants will very generally contest not merely the rates, but the qualities of the land also, and I do not think it will be generally convenient to require the revenue courts to prepare a table of rates only. They will have generally to prepare the jummabundee, and the jummabundies, as well as the tables of rates prepared by them, should be final and not susceptible of question in the civil court. It will also be seen from section 23, clause *c*, that one table of rates will not meet the case of all occupancy ryots.

56. *Chapter XVI* re-enacts the provisions relating to the sale of putnee tenures, and extends the procedure to other tenures which by their title deeds are saleable for their arrears. It would be well to take advantage of the opportunity to get rid of the difficulty that has been felt in respect of places where the year does not run from Bysack to Cheyt. In such cases the petitions are not presented on the first day of Bysack and the first day of Kartik. In some parts of Midnapore, for instance, petitions are presented. The Board's letter No. 391 of the 25th July 1840, to the Commissioner of Burdwan authorized the continuance of the practice, the legality of which was then in some doubt, and it has I believe continued ever since.

57. The additional facilities for the realization of rent which it was understood was to be one of the chief aims of the Bill to provide, are contained in chapter XVIII, and they seem comparatively unimportant. The provisions for the protection of incumbrances in sections 206 and 207 are important. It does not appear if any list of the registered incumbrances to be protected is to be published with the sale notice (section 203, clause 6,) nor is it altogether clear how the purchaser is to be apprised. Many landlords are very ignorant, and there is no chance that in any thing but a small proportion of landlords' serishtas any trustworthy record will be kept of the notices prescribed by section 206. Much litigation is in consequence likely to result. The proviso to section 210, which prevents a person acting collusively with the judgment-debtor, is equitable, but such collusion, though common enough, is difficult to prove.

58. It would, I think, be advisable to extend the provisions regarding protection to incumbrances to sales under chapter XVI.

59. In connection with this and all other transfers it is advisable to call attention to the effect of section 78. It is apparently required of the transferree that he serve notice upon every individual ryot. This in a large estate or tenure with many tenants will be very great. Such service ought, I think, to be general and not personal, and a publication similar to that in section 119 should be sufficient.

60. I think the limits up to which appeal is permitted, as laid down in section 220, very small. It is very desirable to get rent cases finally settled quickly. I would allow no appeal from the decision of a moonsiff up to Rs. 100, and none from the decision of a judge up to Rs. 500. The powers of review conceded to the District Judge in the section 1 would retain.

W. H.—Reg. No. 10633J—132—26-1-91.

No. 25T, dated Camp Dhunwar, the 9th November 1880.

From—J. F. K. HEWITT, Esq., Commissioner of Chota Nagpore,

To—The Secretary to the Board of Revenue, Lower Provinces.

I HAVE the honour herewith to forward the report on the Draft Bill to consolidate and amend the law of landlord and tenant, called for in your memorandum No. 659W, dated 30th July 1880.

2. As Act VIII of 1869 has never been in force in any part of this Division, neither the district officers nor myself have, during the last few years, had any opportunity of watching the working of the rent law now about to be repealed, and our experience has been solely gained from the opportunities we have had of observing the effects of this law before we joined the Chota Nagpore Commission, and from our observations on the relations between landlord and tenants in this province. This latter source of information, however, gives but little guidance towards forming an opinion on the same relations in Bengal, as the land tenures over the greater part of Chota Nagpore are so different from those in Bengal that there is little analogy or ground for comparison between them.

3. Manbhoom, and parts of Singbhoom, in which the rent law has hitherto been Act X of 1859 as altered by Act VI (B.C.) of 1862, and Act VIII (B C) of 1865, are the only districts in Chota Nagpore in which the land tenures are so similar to those in the adjoining tracts of Bengal as to make it advisable that the same landlord and tenant law, which is in force in Bankoorah and Midnapore should be applied to the adjoining parts of those districts, and I should therefore recommend that the proposed law should be extended to Manbhoom and the Dhulbhoom Estate in Singbhoom, with such modifications as are detailed in the subsequent sections of this report

4. I had thought at one time of proposing to incorporate in the Draft Bill the special sections necessary to adapt the law to the peculiar tenures of the Chota Nagpore plateau, and thereby making one law for the whole province; but I find that in order to do this it would be necessary to have a special chapter for Chota Nagpore similar to that for Behar, and it would be too late, at the present stage of the discussion on the Bill, to introduce a series of proposals which might be more prudently postponed to a later period

5. I therefore propose to leave the question of the alteration of Act I of 1879, the present rent law of Chota Nagpore, aside for the present, and to confine my remarks to the proposed Bill in its general aspect, and in the special modifications required to adapt it to the wants of Manbhoom and to the parts of Singbhoom adjoining Midnapore.

6. The Bill, when passed, will be an immense improvement on the old rent law, and will, I believe, by its more accurate definitions and distinctions, tend to decrease the litigation which has hitherto, owing to the omissions and ambiguities of the previous laws, so embittered the relations between the landowning and cultivating classes.

7. No one can dispassionately read the very able statement of the whole question as to the fundamental relation between the two parties set forth in Mr. O'Kinealy's note on enhancement, dated 16th June 1880, without being convinced that (1) the relations between landlord and tenant in Bengal and Behar are totally different from those existing in England; (2) that endless confusion must result from an attempt to bring conclusions deduced from English land law to bear on the land law of India; (3) that the relations between the landlord and tenants, as set forth in the proposed Bill, are in the main those which have subsisted in Bengal from the earliest times of which we have any distinct record; (4) and that these relations, though obscured and sometimes nearly completely obliterated in practice, have been upheld by the written law since the time of the permanent settlement.

8. This being the case, it is clear that at the time of the permanent settlement. the pergunnah rates of rent were really the Government share of the price of the produce of the lands under cultivation, the remainder being considered to belong to the ryots. Government reserved to itself the right of enquiring into and fixing these pergunnah rates from time to time, and never meant to give this power to the zemindars. Unfortunately no systematic attempt to lay down the rules, under which these rates should be determined, was ever made before Act X of 1859, and consequently the zemindars assumed to themselves a power of raising ryots' rents which did not belong to them: and though these powers were frequently interfered with by the courts, yet, in many cases, they succeeded in accomplishing their object, and largely increased their rental by raising the pergunnah rates.

9. What the laws of 1793 gave to the zemindars was the zemindars' share of the collection of rents at pergunnah rates of lands then under cultivation. This share seems to have been fixed at 10 per cent. Besides, they were given all the waste lands in their estates free of future revenue, and they were allowed to keep all rents paid by immigrating ryots on such land, but they were never allowed to raise the rents of these ryots above pergunnah rates, nor to let the lands at competition rents. As only one-third of these estates was on an average under cultivation, they thus obtained, in addition to their one-tenth of the rental on lands under cultivation, the whole of the rental on newly cultivated lands, and it was further

intended to give them such natural increment of the rental as might arise from the increase of pergunnah rates, which rates, however, were to be determined by Government. This last power, however, that of increasing the pergunnah rates, they practically by various evasions and subterfuges usurped, and though it is possible, but not probable, that the increase to their incomes procured by these last means is not more than would have resulted from periodical revisions of the pergunnah rates by Government, it is clear that the great majority of the Bengal and Behar landowners have obtained a large part of their present rentals by systematically breaking the law.

10. Under these circumstances it is impossible for the zemindars to allege, as has been done by some of their advocates, that the provisions of the Bill are an encroachment on their rights. If there has been encroachment on any side it has been committed by the zemindars, who partly through ignorance, partly through the uncertainty of the laws, and—I am afraid it must be added—in many instances through *malice prepense*, have systematically encroached on the right of the ryots.

11. The rights of the ryots were those which had always belonged to resident cultivators, that is, the right after they had settled in a village and become permanent residents to hold land at the current rates paid by other ryots, and they were, when once established, not liable to oustor at the arbitrary will of the zemindar.

12. The above is a *résumé*—and I hope a fairly accurate one—of the rights of the two parties; but though the relations between landlord and tenant therein set forth have been always recognized by the law, yet the recognition has been expressed in such obscure terms, and scattered over such a multitude of Acts and legal interpretations, as to be fully discoverable only after long and patient research. It was, I believe, the obscurity more than the imperfection of the law that led to constant disputes between the two parties, and it will be one great merit of the present Act that it will clear up all hitherto disputed points, besides leaving, I hope, little or no room for others to arise.

13. I will now proceed to remark upon the successive chapters and sections of the Bill.

14. *Chapter I, section* 1.—In order to enable the Act to be extended to Manbhoom and parts of Singbhoom, I would add, in section 1, after the words "division of Orissa" "or to the whole or any part of the district of Manbhoom or of the estate of the Rajah of Dhulbhoom, in the district of Singbhoom, in the Chota Nagpore Division," and after the words "in such notification shall have operation" the words "in the Orissa Division, and those parts of the districts of Manbhoom and Singbhoom to which it may be extended."

15. I have, in the above paragraph, given power to extend the Act to the whole or part of Manbhoom, because in parts of the western tracts of that district the tenures are similar to those of Lohardugga, and ought to come more especially under the Chota Nagpore Rent Law.

16. *Section* 3.—I would insert a clause in the definition of land to show that mining rights could in no case, except where the rights are specifically given, be included in the lease of land. The definition as it stands is, I believe, really clear upon this point; but there is room for doubt which would, I think, be obviated by adding an explanation that "nowhere in the Act are mines included in the term lands." The question as to mining rights may very easily arise in the metalliferous lands in Manbhoom and Singbhoom, as well as those in the Burdwan, Beerbhoom, and Bhagulpore districts, and I think that a clear statement that the Act does not refer to mining rights, would prevent future attempts to acquire mining rights under cover of the Act. These rights have been effectually reserved to the zemindars in all permanently settled estates under the recent orders of the Government of India; but the question as to the rights of undertenure-holders in mines is still in an undecided state, and it would be much better that these rights should, if the zemindars and undertenure-holders cannot come to a compromise, be decided in a regular suit, than there should be any room for introducing into such questions the usual preliminary skirmishes of a criminal charge of trespass, theft, or other offence against property, to be followed by an appeal to the Collector under whatever clause of the rent law can by any possible construction be brought to bear on the case, and the whole to culminate in the civil suit which ought to have been brought at first.

17. If it should be proposed that all cases as to mining rights analogous to those about land fisheries, &c., should be determined under the Act under consideration, I would remark that I do not think there is anywhere sufficient information available to enable the Council to deal satisfactorily with the subject without delays in ascertaining all the facts necessary for forming a judgment which would hinder the early settling of much more pressing questions.

18. As regards the question of the rights to mines in its political aspect, I think that though there may be some doubt as to the rights of holders of permanent undertenure-holders to mines situated on their lands, yet that custom would be frequently found to have given them these rights, and whenever they have been accustomed customarily to exercise these or analogous rights, it is politically expedient that the custom should be recognized, and that in any Act setting forth the rights of various landowners to mines, care should be taken that the customary rights of the undertenure-holders where existing, should be fully recognized.

19. *Section* 11.—It would remove possible doubts as to whether the Bengal or Behar bigha was intended in this section to add after the words "one hundred standard bighas of land," in clauses (*a*) and (*b*), the words "of 14,400 square feet to one standard bigha."

20. The Deputy Commissioner of Manbhoom, and the Committee of pleaders, to whom he referred the provisions of the Bill, both agree in pointing out that there is no land measurement recognized throughout the greater part of Manbhoom, the land being let there according to "rekhs or kunis" or according to "kats." The rekh or kuni is properly the sixteenth part of the area of a village, but practically it is often more, many villages containing only ten or twelve "rekhs" or "kuni,." As the kat is an area of measure nominally according to the quantity of seed sown, it ought to be somewhere about three bighas, but it frequently is more. The Deputy Commissioner proposes to limit the class of tenure-holders to those who hold one or more villages, but by so doing he would leave out a large number of those who as a rule sublet their lands, and as I think all such persons should, as far as possible be considered as tenure-holders, I would make all persons holding one rekh or kuni or other specified share of a village tenure-holder, making all persons holding less than a rekh or kuni, ryots. I would also stipulate that this special rule should only prevail in lands where no regular field-by-field survey or settlement has taken place, and that where such survey has been made the rule as to the 100 bighas should hold good.

21. Mr. Clay also points out a further alteration in section 11 as required to adapt it to the customs of Manbhoom. A large number of the estates in that district are held under the rule of primogeniture, and in such estates it is customary for the younger sons to get lands assigned to them as maintenance for their life. These grants are also common throughout Chota Nagpore, and there they are universally heritable, but only by heirs male of the original maintenance-holder. In Purulia it has been decided by the Privy Council in the case of the Patcoom Estate, that such grants are only for life, and possibly the same decision may be given as to other cases that may arise in the district, but, at any rate, by custom the grant is neither transferable nor permanent in the strict sense of the latter words. As section 11 sets aside all customs with regard to such grants—these grants not being for a term of year by year—it would, if extended to Manbhoom, without alterations, make all maintenance grants of above 100 bighas held over 12 years both permanent and transferable.

22 I would therefore, to meet the special cases above detailed, add exceptions at the end of the section to the following effect:—

Exception I—In those parts of Manbhoom and Singbhoom where no regular field survey or settlement has been made by Government, persons holding one specific share of a village described as rekh, kuni, or other recognized local name for such share, shall be considered tenure-holders under the provisions of the above section, and shall be considered entitled to all the privileges therein declared to belong to such tenure-holders.

Exception II.—The provisions of the above section, declaring under-tenures under certain circumstances to be permanent and transferable, shall not apply to maintenance grants given to the younger sons of proprietors in Manbhoom and Singbhoom.

23. *Section* 12.—The Manbhoom Committee remark as follows with reference to this section:—"Section 12 of the Bill treats of tenures which are known as *noyabadi* tenures in Manbhoom. The greater portion of the district being still unreclaimed we have always to deal with noyabadi leases. They are granted on the condition that for the first three or four years the lessee will have to pay nothing to the lessor; after the said period, the lands reclaimed are measured and assessed according to pergunnah rates. From the total amount thus assessed the lessee obtains deductions of a six-anna portion, *i.e.* nearly 38 per cent. He continues to reclaim the lands demised to him and periodical assessments are made on such reclaimed lands in the manner stated above. Considering the expense and labour of these reclamations, we are of opinion that a profit of 20 per cent. is quite inadequate, and that we would fix the minimum at 30 per cent." I agree with the Committee in thinking the minimum of 20 per cent. is too low. I would allow at least 30 per cent. profit on such tenures.

24. *Section* 13.—An exception must be added to this section exempting maintenance grants in Manbhoom and Singbhoom from its operation.

25. *Chapters III and IV.*—I certainly think that Chapter IV should be omitted, and that ryots who have held land for three years or more should be entitled to all the privileges of occupancy ryots. There can be little or no doubt that these ryots held these privileges before and subsequently to 1793, that the 12 years' rule of Act X was the first legal encroachment on these privileges, and that Act X only affected them by implication, as it would have been frequently possible to prove the existence of these rights in the case of resident ryots by custom.

26. I consider therefore, that the formal acknowledgment of the rights of these ryots would be only an affirmation, and clear exposition of the existence of rights which have always subsisted wherever undisturbed by extraneous and unauthorized action on the part of the landowners. The acknowledgment of these rights would also tend to prevent litigation and put a stop to attempts made to deprive the tenant of the privileges which are admittedly vested in ryots who have held land for 12 years.

27. *Section* 19.—It appears from the report of the Manbhoom Committee that it has been held by the courts in some cases though not in all, that a ryot in a ghatwali tenure cannot acquire a right of occupancy now. Though the law very rightly does not propose to deal with the rights of ghatwals, it is probable that the question as to the rights of ryots under ghatwals may be brought before the courts under the provisions of the Act.

28. In Manbhoom ghatwals frequently hold whole villages, and there are holdings consisting of a considerable number of villages. Though, as a rule, all ghatwali holdings should be cultivated by a ghatwal, and his "tabedars," yet this is practically impossible in the case of the more extensive holdings. It would be exceedingly impolitic to subject a ghatwal holding a small area to the creation of such subordinate rights on the parts of his under-tenants as would incapacitate him from supporting himself from his land or doing his duty, and which rights by continuing in spite of a change of owners would make a new ghatwal appointed to the post, in consequence of the incapacity of the former ghatwal, equally incapable of doing his work.

29. Mr. Clay thinks that occupancy rights should be entirely disallowed in ghatwali holdings; but I do not see why the ryots of ghatwals, who are practically large zemindars, should be put in a worse position than other ryots, and I would allow the ryots in such estates all the rights legally given to ryots in general and only limit the rights in small estates. As all ghatwali holdings are now being surveyed, and the areas of the ghatwali lands in each village ascertained, the difficulty might be met by a clause to the following effect :—

30. "In Manbhoom rights of occupancy shall not be acquired by ryots in ghatwali estates where the whole area held by the ghatwal and tabedars under him is less than 50 bighas for each family of the occupants. In reckoning the number of families, only those of which the heads actually do ghatwali duty shall be reckoned as families; a superannuated old man and his son shall not be reckoned as two families."

31. I think this would be a better method of settling the difficulty than that of relegating it to the discretion of the courts as to whether rent suits in ghatwali estates will lie under the Act, or leaving it to be settled in the Act, defining the rights and duties of ghatwals, which must be ultimately passed. If left unsettled till the passing of this latter Act, it would be necessary to incorporate into the Act the whole of the rent law.

32. *Section* 19, *Explanation* 3, *Clause* (*a*).—I certainly think that ryots of mokruridars and istemrardars should be allowed occupancy rights.

33. *Clause* (*f*).—Considering that occupancy ryots are holders of less than 100 bighas of land, the persons claiming rights of occupancy under such ryots cannot be very numerous, and it would, I think, on the whole, be better to retain this clause. It should be our object, as far as possible, not to encourage infinitesimal small holdings on which the ryots cannot gain sufficient to maintain themselves in comfort, and the permission to such ryots to acquire rights of occupancy would be a direct encouragement to the formation of such holdings.

34. *Explanation IV*, *Clause* (*h*).—I cannot but think that the landlord should be allowed to prevent the acquisition of an occupancy right, and the following case, stated by the Manbhoom Committee, shows that it would in some cases produce serious hardship if the occupancy right was made absolute in despite of a contract that it should not accrue.

"A serves as a clerk at Mirut. He has some paternal lands at home in Burdwan; he let out the land to B. by written contract, and went to Mirut with his family. After twelve years he was dismissed from his service or was pensioned off; he returned home with his family. Under this state of things, if he could cultivate the land himself as his father did, he might support himself and his family, but if the law interfere, and make the express contract originally entered into nugatory, he would be forced to live upon the rent as best he could. Such instances are not rare in Bengal." Other similar cases might be cited, and though the power to prevent the acquisition of the right may be abused, yet the provision that such contracts must be registered will render it certain that ryots contracting themselves out of the right will do so with their eyes open.

35. *Section* 20.—The Manbhoom Committee think that if the mortgage of ryots' tenures is made illegal, the ryot will be left without means of obtaining seed or the capital to till his land, as no mahajun will lend him money without security.

36. It appears to me that borrowing is already too common, and that every effort should be made to emancipate the ryots from the pressure now exercised by the mahajuns. If a ryot cannot sow his land without borrowing he cannot pay his rent; his tenure will be sold to liquidate the arrears, and the unthrifty ryot will become, what he ought to be, a day-labourer for wages; therefore, though the mortgage and sale of occupancy tenures are both common in Manbhoom, I should be very glad to see the former process put a stop to. By far the larger numbers both of landowners and ryots in this Division belong to the improvident class, and have apparently no power of realizing beforehand the results of signing a bond conditionally parting with their property. Nothing would induce them to sell it outright, but if they mortgage it they think something will turn up to save them, and in the meantime they have a little ready money with which to amuse themselves. When the day of reckoning comes they think that they are very

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ill used, and so in most cases they are, as they muddled away their property for a price far below its value ; but however much they regret this hereafter, nothing will make them anticipate it beforehand. Any restriction upon this recklessness cannot but be productive of good.

37. *Section* 20, *Clause (c)*.—Considering that the landlord has the right of selling the tenure as a security for his rent, and as he has no other property in the land held by an occupancy ryot except the right to rent, I do not think that he should be given the additional power of introducing conditions into the lease which may completely destroy his right of occupancy. It is all very well to say that these conditions must be made in writing, and therefore the ryot must know what he is about when he makes them, but suppose the following case, that of a ryot who cannot pay his rent, and against whom the landlord has got a decree. The landlord threatens to sell his tenure summarily in execution of the decree, and the ryot cannot avoid the sale by paying if it is to take place at once, though he might do so if it were postponed till he had sold his crops. The landlord, finding this is the case, says he will forego the sale if the ryot will contract to enter a stipulation in his lease that he will be liable to ejectment if he fails again to pay his rent before a certain day fixed. The ryot agrees to the condition to stave off the coming sale, and again fails the next year to pay his rent by the fixed day. In this case it appears to me that, under the wording of the Act, the landlord might eject the ryot upon proof of the breach of covenant; and though he might get compensation for improvements, he would lose the price of his right of occupancy which he might have had the previous year.

38. *Sections* 21 *and* 22.—I do not see any reason for suggesting any alteration in these sections. The proposal to take one-fourth of the average value of the gross produce of staple crops, the land for which the rent is payable as the maximum limit of increase under the first, third, and fourth grounds of enhancement, gives the utmost possible extension to the rights of the zemindar, and in no Government settlements that I have ever made has so much been taken.

39. *Chapter VI.*—The Manbhoom Committee point out that it is the custom on the Pachete estate to give all Brahmins, Kaists, and Vaisyas homestead lands rent free, and, arguing from this custom, propose that the rents of homestead lands should never be enhanced. Of course, where a similar custom to that alleged by the Committee is proved to exist no enhancement can take place, but in other places I think the rule laid down in section 42 gives the ryot much more security than could be given by any other rule, than one absolutely prohibiting the enhancement of the present rent paid by occupancy ryots. Such a rule would in most parts of the country be an entire innovation on the present custom, where the ryots willingly pay higher rents for bari lands which are fitted for cultivation, and in no case that has ever come under my observation have I found the actual rents paid for houses too high. These are usually exceedingly moderate. I think that the proposed section fully coincides with the rule actually observed on all well managed estates, and it will be a useful guide to those who may feel doubtful as to how such rents ought to be fixed.

40. I would, however, add a proviso to the section that no ryots house-rent can be enhanced by any landlord or heir of such landlord who has contracted not to enhance the rent. This would make its meaning more perfectly clear than it does at present, though I myself understand that, even as the section at piesent stands, a contract would be a bar to enhancement.

41. *Chapter VII* needs no comment

Chapter VIII, Section 46.—The Manbhoom Committee and Mr. Clay think that the time allowed for transfer is too short, and would extend it in all cases to six months. The Manbhoom Committee would also fix the minimum fees at four annas and the maximum at Rs. 25; while Mr. Clay would leave the landlord unfettered as to the fees that may be charged.

43. While I do not think that the limit of three months is too short in the case of tenure-holders who will have sufficient intelligence to learn all the incidents necessary to the preservation of their tenure, I must say I think it is too short in the case of occupancy ryots. Ryots holding from 5 to 10 bighas, as many of them do, will, in Behar, certainly never think of recording the transfer of their holdings, unless the necessity of doing so is in some way brought home to them. The best chance of this being done is their attendance at the sherista to pay their rent, and this will take place except where the rent is collected locally by a teshildar at least once every six months. I would therefore fix six months as the time within which transfer is to be recorded in the case of occupancy ryots.

44. I would also, in the case of occupancy ryots, fix the minimum fee at eight annas and the maximum at Rs. 25, and enact that no more than eight annas shall be exacted from any ryot holding 10 bighas or less land.

45. There is also a point in section 47 which I think requires to be cleared up: this is what constitutes a registration of a transfer. Is it necessary that the applicant should make a formal application for registration, and that the transfer should be recorded in a book kept for the purpose, or will a receipt for rent given to a transferee constitute a registration of the transfer? I must say that while I believe it will be easy to secure the registration

of transfers of tenures, it will be very hard to secure those of occupancy rights, and, in the latter class of holdings, I would make the grant of a receipt for rent to the heir of the occupancy ryot to amount to a registration of the transfer. Transfers by sale I would require to be assented to by entry in a register.

46. I would make it incumbent on all landowners to keep a register of transfers, and would leave it to the discretion of the court to call for and examine such registers in cases where the right of absolute disposal of the holding by the zemindar under section 51 is objected to, and to refuse to allow any zemindar who is shown not to have kept this register to enter upon possession of the holdings of any of his ryots under section 51.

47. If ryots holding for three years acquire rights of occupancy, such stringent legislation as the above will not be required, because the right of occupancy will be so common that the landowner will not try to devise means to upset it; and as the rates of rents of occupancy ryots will doubtless become the ruling rents in such village, it will not be in any way his interest to interfere with the holding. If, however, the 12 years' rule be adhered to, there will doubtless be a very considerable class who will probably in many cases pay a somewhat higher rent, and in such cases the power given in section 51 might be a most potent instrument for breaking down occupancy rights. The landlord might, in such a case, slumber over his rights for some years, and then suddenly come down upon the ryot, under section 51, with a charge of not having tranferred his tenure, and oust him from it.

48. *Chapter* 9, *Section* 57.—The Manbhoom Committee and Mr. Clay object to the elaborate requirement of this section, the Committee remarking that many of the tenure-holders are too poor and many too illiterate to be able to procure printed books and fill up th entries. I certainly think that in Manbhoom and Singbhoom it will be necessary, if this section is to be enforced, to provide books of receipts to be sold to landowers at a low price at the Government treasury. If this were done, and care were taken that the provisions of section 57 were made known to all land and tenure-holders, there would, I think, be no difficulty in carrying it out. I regard the provisions of the section as such an important security for the ryot and zemindar, that instead of making the provisions of the section more elastic, as Mr. Clay proposes to do, I would use every means at the disposal of the administrative authorities to make it understood that the observance of the provisions of the section is insisted on by Government. If notice to this effect were given to the landowners, and books of rent receipts were made easily procurable at the treasury, there would, I am sure, be no difficulty in carrying out its provisions in the district.

49. *Sections* 58-61.—The Manbhoom Committee object to the publication of the notice of deposit prescribed in section 61 as insufficient, and also object to the cost of the notice served upon the zemindars being deducted from the amount of the deposit. Mr. Clay agrees with them in this last objection, and also joins with them in pointing out that, in Manbhoom at least, deposits are more frequently made by ryots who want to pay less than proper rent, than by those from whom excessive rent is being demanded by the zemindar.

50. I can certainly corroborate these statements on this point, as nothing is more common, both in Manbhoom and Lohardugga, than for ryots, who fancy they have a right to have their rents lowered, to pay them into the Deputy Commissioner's court at the rates they fancy they should be, rather than to pay rent to the landlord at the rates he demands. In Lohardugga this is very commonly done by claimants to lands under the Chota Nagpore Tenures Act, when the whole or part of the lands claimed by them have been found to be rent-paying lands; they try to maintain their rights to hold at the lower rates assessed on the bhuinhary tenures by paying in the rent at these rates in the Deputy Commissioner's court, and declaring these are the rent-rates of the village. A similar course is pursued in Manbhoom by ryots who have a quarrel with their landlord, and use the objection to his rate as one of the weapons of assault.

51. In cases where the ryots are in fault, the Committee point out that suppose a man pays two rupees into court as his rent, the amount is practically swallowed up in payment of the cost of notice; and as such deposits are frequently made without notice to the landowner, a false statement that he refused to receive the rents being recorded with the notice, it is in many cases impossible for him to appear and claim the rent till the notice has been served. All landowners have not agents in court, nor are all agents so attentive to the interests of petty employers as to inform them of notices of deposit.

52. I think that if a careful watch is kept upon these cases, and all false statements as to deposits made under section 59 severely punished, the offence of making false declarations as to the tender of the rent would soon cease; but in order to protect the landowners against deposits of sums manifestly less than the full amount due, I would add a clause after section 59, or in chapter XIII, declaring that a ryot who deposits a smaller amount than what he knows to be the full rent of his land due at the date of deposit shall be adjudged to pay double the amount actually due to the landowner as damages. I think the damages in such a case should be higher than those awardable under section 90.

53. With these safeguards I think that the clause declaring that the cost of notice served under section 61 may stand. If the rent is really tendered to the landowner, and he refuses it, it is his own fault if he does not ascertain whether the tenant has availed

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himself of the right given him under sections 58 and 59 to deposit his rent with a public officer authorized to receive it.

54. *Section* 62.—The provisions of this section will be a great boon to the ryots in Bengal and Behar, who hold under a number of joint shareholders, but will not apply to the tenures of Manbhoom and Singbhoom, where the rule of primogeniture holds good.

55. *Section* 63.—This section is merely the re-statement of the present law, and does not call for remarks.

56. *Chapter X.*—This Chapter will not apply to the tenures of this Division, but it will, I hope, effectually stop the confusion and constant breach of the peace caused by the quarrels among coparceners in those districts where estates are held by joint shareholders. The previous law, as all officers employed in Behar well know, was utterly inadequate to deal with such cases.

57. The only point in this Chapter which is open to doubt is whether the Zillah Judge is the best person to decide whether the circumstances of the case justify recourse to the section. Doubtless the Zillah Judge has opportunities of learning a great deal of the internal quarrels of an estate from the rent cases that appear before him and the Judges subordinate to him, and probably rent cases will be accompanied by applications to the civil court which will show him clearly the state of affairs; but as far as my experience goes, rent suits and applications to the civil court represent a somewhat acute stage of the disease, and that long before these appear its existence is well known to the executive authorities through the criminal charges and petitions to the Magistrate preferred by both sides. Doubtless the appeals in these cases go to the Judge, and so he may have by this means early opportunities of ascertaining the existence of what may develope into a serious case.

58. If it be held that the provisions of Chapter X should not be put in force till the case is serious, I think that the Bill is right in leaving the decision as to whether the time for putting it in force has come to the head of the criminal courts of the district; but if the enforcement of the law is not to be deemed a punishment, but a prudent prevention for the preservation of peace, I think it would be better to vest the power of enforcing its provisions in the Commissioner as the head executive authority. If the provisions are to be considered a punishment, the most vigilant scrutiny of the evidence will be required, and the court, which is daily occupied in testing and weighing evidence, can best test the value of the evidence; but I would submit that, if the enforcement of the law in this Chapter is to be merely considered as a precautionary measure and not a punishment, the evidence to prove the necessity of such measures is not so much that of overt and notorious acts, but of a series of accumulative proof which can scarcely be laid satisfactorily before a court in which it is subject, not to the fair criticism of opposing counsel, but to the efforts of counsel, on one side at least, to distort and mangle it so that its true import is scarcely recognizable.

59. I would therefore urge that the provisions of this Chapter should be enforced by the Commissioner on the report of the Collector.

60. *Chapter XII, Section* 77.—Mr. Power, Deputy Commissioner of Lohardugga, in a valuable report, which I have not referred to previously owing to its being almost entirely confined to the discussion of customs and land tenures peculiar to Chota Nagpore, points out, with regard to this section, that it does not settle who is entitled to such trees as mohua and karanj trees. The first of these is generally a remnant of the old jungle, and the latter generally grown from self-sown seed; neither of these kinds of trees were generally planted by the ryot or his predecessor, and yet in Chota Nagpore, and throughout the greater part of Manbhoom, these trees, when they exist on a holding, are considered by the ryot to belong to him. They are a constant source of dispute, as the zemindar frequently claims them, and it would certainly be of great public benefit that these disputes should cease.

61. I would introduce a clause to the effect that trees forming part of the original jungle or self-sown should be considered to belong to the ryot, except in cases where a local custom was proved to exist, giving the landowner the right of appropriating the fruit of these trees. In equity, trees belonging to the original jungle left standing, and always appropriated by the ryot and his predecessors, belong to him, and I do not think his right should be interfered with. This clause will, I believe, be found applicable to those parts of Midnapore, Bankoora, Beerbhoom, Bhagulpore, Monghyr, and Gya, where such trees exist, and will, I am sure, if incorporated in the law, lead to the prevention of breaches of the peace.

62. *Chapter XV.*—It is very possible that Collectors may be overwhelmed with applications under this Chapter, and that the Government may be greatly embarrassed by providing the agency necessary for making enquiries under the Act, yet I am so certain that no enhancement suits can be equitably decided under clauses 1, 3, and 4 of section 22, except by a local enquiry which can rarely be satisfactorily made by the civil court, that I would strongly urge either the retention of the proposed provisions of the Act, or else the appointment of a special agency in each division to ascertain rent rates and fix pergunnah rates. If the Act was altered so as to provide for the creation of such an agency, the mode in which these enquiries were to be conducted, the evidence they should take, and to determine the authority whose judgments as to the conclusions to be deduced from the enquiry should be final, I think it would be a considerable improvement on the somewhat cumbrous legislation proposed. The above points being determined, the finding

of the divisional committees or settlement officers, when finally sanctioned, could be made binding on the civil courts; and these courts would be thereby provided with evidence necessary for the satisfactory decision of the cases before them, much superior to that which could be given by even the most trustworthy witnesses when the evidence of these witnesses was confined to individual and separate cases.

63. *Chapter XVII.*—I would introduce a section in this Chapter authorizing landowners to sue a number of ryots in one village for arrears of Rs. 10 and less, where there is no other issue raised in the cases except whether the rent has been paid or not. It is a serious hardship for ryots owing petty sums to have to pay their costs nearly as much as they owe, and it is also a serious addition to a landowner's preliminary expenses to have to pay for a separate stamp on such petty claim. There are some hundreds of these cases of this kind annually decided *ex parte*, and it would be a boon to both parties if the costs could be reduced. There is a provision to the effect in the Chota Nagpore Rent Law, section 39 of Act I (B.C.) of 1879, which works well, and I do not see why a similar section should not work well elsewhere.

64. I would, to prevent such cases being used as a means of deciding other issues that may arise, enact that whenever in his answer to the claim a ryot raises any other issue than that as to whether he has paid the rent or not, the case against him will be struck out, and the plaintiff left to bring a separate suit against him. In cases, such as I propose, separate notices should be served on each ryot, and services of each individual notice must be proved before an *ex parte* decree case issue.

65. *The limitation of suits.*—The Manbhoom Committee suggest that the limitation of six months under clause 4 of the third schedule is too short, and they suggest one year as the limit; but as under clause 8, section 79, the disclaimer must be made in a suit to which the landlord is a party, I do not see the force of their objection to the limit proposed in the Bill. They also think the limit of one year, in clause 16 of the schedule, is too short, as they point out the difficulties an auction purchaser has in ascertaining the tenures on his estate, but as the limit is to reckon from the time he becomes aware of the existence of the encumbrance he proposes to avoid, I do not think that the limit should be increased.

66. They also propose to allow no limit for suit for abatement of rent, as there is now in cases for enhancement; but in this I do not agree with them. The tenant must be, or ought to always be, at once aware of the existence of grounds for abatement when they occur, whereas the landowner has not the same facility of ascertaining the existence of grounds of enhancement.

67 They also object to the limit of one year in clauses 17 and 20 as a great decrease of the time of 12 years allowed by the Limitation Act. I must say that I myself consider the shorter limit now laid down as an improvement in the law.

68. If the law be extended, as I propose, to Manbhoom and Singbhoom, Deputy Collectors in those districts will have to be vested with the powers of moonsifs for trying them.

N T W.—Reg No. 10402J—88—6-1-81.

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No. 455RL, dated Alipore, the 31st December 1880.

From—J. Monro, Esq., Officiating Commissioner of the Presidency Division,
To—The Secretary to the Board of Revenue, Lower Provinces.

I have the honour to submit the following general report upon the Rent Bill, called for in your letter No. 659A, of date the 31st July 1880.

2. I have found it impossible, under the pressure of other business, to treat the subject in detail as required; the questions raised in the report of the Rent Commission are so numerous and so important, that with the limited time at my disposal, I have not been able to discuss them at length.

3. In my letter No. 311RL, of date the 15th September 1880, I brought to the notice of the Board the inadequate time allowed for the submission of a report upon this important subject, and the Board were pleased to extend the time prescribed by fifteen days. Even with this extension of time granted, I have found it impossible to fully ascertain the views of the landholders and others interested in the Bill, or to discuss in detail the many questions raised by the report of the Rent Commission.

4. The provisions of the proposed Bill are as yet very imperfectly understood by the people. Some of the Landholding Associations have taken up the subject, but the great majority of the zemindars are in a state of alarmed ignorance with reference to the proposed changes in the law. They have not read the Bill, and indeed they have little opportunity afforded of reading it, on account of the vernacular translation of the Bill having but lately been available; they only know in a general way that a Bill is under contemplation which seriously affects their interests, but in what way their interests are either attacked, compromised, or benefited by the proposed enactment, they have no information.

5 The ryots, on the other hand, are in a state of apathetic ignorance about the Bill. Even rumours regarding the proposed Bill have not yet reached them, and they are in consequence quite unaware of the legislation which is in progress in their interests.

6. It is, in my opinion, of the very greatest importance that ample time should be given to zemindars, all interested in land, and local officers, for the thorough discussion of the Bill. The thorough discussion of the important subject of the relation between landlord and tenant throughout Bengal, requires both time and thought, and revenue officers are at the present moment overburdened with their ordinary work. Any discussion of such an important subject during the spare moments of local officials is almost certain to be incomplete, hasty, and superficial.

7. The Bill contemplates the introduction of a series of measures which will very materially and radically affect the existing relations between landlords and their tenants. I am not aware that there is any pressing necessity for such change except in one or two particulars, and if there is no such necessity, I am bound to say that the radical alteration of the Rent Law proposed is in my opinion uncalled for and unwise.

8. The only two points upon which the existing law requires modification, and with reference to which zemindars or ryots desire any change or improvement, are enhancement, and the more summary collection of their dues by rent-receivers. It will be found in practice that at the bottom of every dispute between landlord and tenant lies the question of enhancement of rents, followed generally by a refusal on the part of ryots to pay rent at all until the questions at issue between them and their zemindar are decided.

9. As a matter of the fact the ryots enjoy fixity of tenure. So long as they pay their rents zemindars do not think of evicting them; and even when they do not pay their rents eviction is about the very last means that a zemindar resorts to of recovering his dues. Ryots practically have a right of occupancy, although such right in many cases is not defined by law, and the holders of legally defined occupancy rights value the same, not so much for the title which the possession of this right gives them to the land, as for the protection which it gives them, except in certain cases, against enhancement. The existing immunity from eviction which the ryot enjoys by virtue of agreement (tacit or otherwise) between him and his zemindar, and the practical possession in the same way of a right of occupancy are, however, very differently looked upon both by the zemindar and ryot when such rights are conferred by law, and when the agreements entered into by both parties from self-interest, the custom of the country, or mutual friendly feeling are regulated by the hard-and fast rule of particular sections in a particular enactment.

10 If the law as regards enhancement be modified, and if a summary procedure for the realization of rents be given to the zemindars, the cause of complaints of both parties will be removed and no further legislation will be required The provisions of the existing Rent Act in other respects are well understood both by the zemindars, ryots, and the Courts, and I cannot see any good reason for changing the law, which on the whole, except with reference to the two points above mentioned, works well.

11. Such sweeping changes are only advisable, especially in this country, under very exceptional circumstances; and so far as my experience goes there is nothing at present in the relations between landlord and tenants to call for such a radical change in the law as is contemplated. When I consider the principles upon which the proposed Bill is based, I cannot but think that the radical change which it is proposed to introduce will unsettle the existing relations between rent-payers and rent-receivers in a manner which will be prejudical to both parties. Such a change will undoubtedly increase litigation, and will render zemindars and ryots bitterly hostile to one another, and whether the ryot or the zemindar wins the day, the result of their disagreements will be impoverishment to both. The zemindar

will be constantly on the watch to prevent any ryot acquiring even the semblance of any right which he might be entitled under certain circumstances to acquire; he will take advantage of every means allowed by law, and of many methods not allowed by law, to harass the ryots who do not submit to his terms; and whatever rights may be conferred on ryots they will find that the legal enforcement of their rights in our Courts of justice will in the end render them pecuniarily less able than formerly to disagree with their zemindar, and less able to enjoy the benefits which protracted litigation may have conferred upon them.

12. The question of the rights of zemindars and ryots as determined at the permanent settlement is one which, as is well known, has given rise to much controversy. The majority of the Commission have decided it in favour of the ryot, and the principle which runs throughout the whole of the Bill is to give to the ryot now, a fixity of tenure which it is alleged he possessed at the time of the permanent settlement, of which he was never legally or expressly deprived, and which constitues still a living tenant-right throughout Bengal.

13. I do not propose in this general report to discuss fully the question of whether the zemindars at the time of the permanent settlement were, or were not, declared proprietors of the soil. I confess that looking to the language used in the old Regulations, and to that in the reports and other papers which are given in Harington's Analysis, I confess, I say, that if language means anything, the zemindars were declared to have proprietory rights in the soil. These rights may not have been exactly what we understand by proprietory rights in England, but they went, in my opinon, very far beyond the status which the majority of the Commission would assign to the zemindar.

General view of the rights of the ryots.

14. The rights of the ryots before the settlement and under the Mogul Government are, it seems to me, well described in one of the paragraphs of Mr. Shore's minute—"With respect to the ryots, their rights appear very uncertain and indefinite. Whilst the demand of Government upon the zemindar was regulated by some standard, as I conclude it was, from the time of Toorun Mal to that of Jaffer Khan, they had little temptation or necessity to oppress their ryots; but the same variable discretion which has affected the payments required from them, has extended in the same manner to the ryots. The rates of land were probably fixed formerly according to the nature of the soil and its produce, the cesses imposed by the zemindars were an enhancement of these rates, and arbitrary without being at first oppressive. It is, however, generally understood that the ryots by long occupancy acquire a right of possession in the soil and are not subject to be removed; but this right does not authorise them to sell or mortgage it, and it is, so far, distinct from a right of property. This, like all other rights under a despotic or varying form of Government, is precarious. The zemindars, when an increase has been forced upon them, have exercised the right of demanding it from their ryots."

15. I fail to see that under the Regulations of 1793 any right of holding lands at a fixed rent was given to any ryots except to the khoodkasht ryots who by prescription had come to enjoy this privilege. With the exception of these ryots it seems to me that the settlement of the rates of rent to be paid was left to be decided by agreement between the rent-receiver and the rent-payer, under the restrictions imposed on the zemindar in section 52, Regulation VIII of 1793, and comprised in section 53, and the following sections. I say the following sections, for it seems to me that whether section 52 close with a colon or a full stop, the meaning of the words used in it can only be that the following sections contain the restrictions referred to in section 52. Assuming, for argument's sake, that the exact status given to the ryot by the wording of the regulations of the permanent settlement is left doubtful, it may be well to consider what was the practical interpretation given to the regulations in question.

16. The framers of the settlement had full information before them as to the very doubtful position of the ryot under the Mogul Government. The abuses of power on the part of the zemindars had been represented to them. These abuses of power were forbidden; but in none of the regulations is it any where laid down that the possession of the land is to remain with all ryots of every class subject to his payment of rent, and that such possession is practically legally independent of the zemindar's consent. This fact, if any, would have been clearly provided for if it had been the intention of the framers of the settlement to revive extinct rights, confer on the ryots any new rights with reference to occupancy beyond the very indefinite right accruing from custom under which they held the land under the Mogul Emperors.

17. The protection of the ryots from oppression, which I take it referred chiefly to illegal cesses and abwabs, engaged the attention of the framers of the early regulations; but I fail to see that beyond forbidding such exactions, they took any practical interest in bettering the status of the ryot. In the year in which Regulation VIII of 1793 was passed, the power of distraint was conferred on the zemindars. In 1799 followed the famous *haftam*, in fact the whole tendency of the legislation of the first few years after the settlement was to enhance the power of the zemindars, not to protect the ryot, or assist him in maintaining any right of occupancy which was given to him.

18. It is true that there is no specific provision in the earlier regulations as to eviction by a zemindar, nor is there any special power of enhancement given till a later period. But there can be no doubt that eviction was resorted to when the zemindar wished to get rid of an obnoxious tenant, and that enhancement of rent existed in practice before the framing of Regulation V of 1812.

19. The clearest interpretation however, of the position of a zemindar with reference to his tenants, as defined under the regulations, is to be found in the rules prescribed by Government in its capacity of zemindar. These are to be found in the rules laid down for settlement officers and for the administration of mehals held khas. From a perusal of these rules it will be possible to ascertain what rights Government conceived attached to the position of a landholder, and what was the status of a ryot under the law.

20. In Circular 190 of the Board of Revenue, of date 12th November 1833, a minute by the Governor-General is published with reference to settlements in the North-Western Provinces, in which the following important remarks are recorded.—"I feel quite satisfied, after mature reflection on this branch of the subject (relatively to which I have recorded my sentiments at some length in minute bearing date the 29th February last), that the Puteedaree is the original and natural tenure of all the lands in the country, the only proprietors known being the ryots (which term comprises the whole agricultural community), and that the zemindaree or talookdaree tenure is adventitious and artificial, being generally speaking a creation of the Mogul Government, and the talookdar or zemindar (I am not speaking of the village zemindars or maliks) himself being originally neither more or less than a contractor with Government for its revenue.

"These people, in the permanently settled provinces, have been declared by law to be proprietors of the soil, and it has been argued by the opponents of the permanent settlement that, by this recognition, all the rights of the real proprietory classes of the country were destroyed But there is reason to believe that, in Bengal at least, all that constitutes the value of such rights had been obliterated long before the introduction of that measure; and though perhaps it may have been practicable, and more consistent with equity, to assign to a different class the advantages arising out of a limitation of the Government demand, it can hardly be contended that the agricultural community were placed, and by that act, on a worse footing subsequently than previously to the formation of the perpetual settlement. The worst effect fairly imputable to the measure as regards that body is, that it may have rendered more difficult the restoration of any rights which might at one time have belonged to them."

21. Here, then, we have the Governor-General recording that the proprietory right in land originally belonged to the ryots, *i. e.*, the whole agricultural community. That the zemindari tenure was originally nothing more than the right attaching to the position of a contractor with Government for its revenue. That the contractor zemindars in Bengal had been declared by law to be proprietors in the soil, and that probably all that constituted the value of the ryots in Bengal had been destroyed before the introduction of the settlement in Bengal.

The Governor-General further on remarks—

"The result of the investigation, instituted by my orders, into the privileges of the different kinds of cultivators, and other matters connected with the fiscal administration of the country, was, as stated by the Sudder Board, that in most zemindaree estates composed of single villages, the ryots are mere tenants-at-will, but that, in some of the large zemindaree estates, there are hereditary ryots in villages who seem to be connected with the land, and the parties to whom they pay rent, as individuals in Puteedaree estates, where there was no superior zemindar, were with the Government, before the enactment of the British Regulations

"Notwithstanding this opinion, I have little hesitation in declaring my conviction that there is, very generally all over India, a description of ryots having a proprietory title to the lands cultivated by them. These ryots are termed meerasdars meerasee, moursee, khoodakasht, qudeem, and have other designations. Those resident ryots, again, who may acquire a sort of possessing title by prescription, are called chupperbund, jummaee judeed, and by other appellations."

Further on the Governor-General proceeds—"At the same time I fully concur in the justness of the following observations contained in the 108th paragraph of the Resolution of Government, dated the 1st of August 1822,—'where the ryots may be merely contract cultivators, holding from year to year, without any permanent obligation or tie, His Lordship in Council would not be disposed to introduce any change; for the system which attaches to the land various permanent interests independent of any contract, between the parties, though it cannot without cruel injustice be destroyed, is not one desirable to establish.'

"Entertaining this conviction, I need hardly add that I entirely differ from the proposition laid down in the note,* recorded by Mr. R. M. Bird on the rights of resident ryots; namely—'that all resident cultivators are entitled to have their rent fixed, without reference to the term of their residence;' for I am of opinion that it should always be borne in mind, that though there may be cultivators who have proprietory right or rights of occupancy, it does not follow that all cultivators have such rights; and that on the other hand, though there may be zemindars who are merely contractors for the revenue, there may be other zemindars who are entitled to be considered as proprietors also. The greatest care should be taken to discriminate, between the different classes as well of zemindars as cultivators, and to avoid confounding the malgoozar of later years with the hereditary zemindar, and the mere agricultural labourer (or individual who having settled in the village as a stranger many years ago has ever since continued

*"This document has not yet been officially recorded, but it has been privately furnished for my perusal."

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to cultivate at the discretion of the zemindar) with the hereditary ryot whose ancestors perhaps first broke up the soil and paid the revenue or rent of the lands, direct to the servants of the State."

In the Settlement Rules, paragraphs 51, 52 and 53 occur the following directions—"The term for which pottahs should be granted in Government mehals, and in mehals held khas in consequence of the recusancy of the proprietors must depend on circumstances. To use the words of the Honorable Court, the object to be kept in view is 'to afford full encouragement to the spirit of improvement;' by the orders of Government, dated 28th November 1837, such leases should be for 3, 5, 10 or 20 years, as may be deemed most advisable; and the lessee should be made clearly to understand that during the term of the lease, he would not be required to pay any addition to the specified rent, whatever kind of produce he may cultivate.

"When the ryots are substantial, and the land in such a state that no further improvement is to be looked for without the outlay of capital, leases should be long in order to encourage outlay. When the land is overrun with jungle, and much labour is necessary to clear it, leases should be long. When the ryots are poor, and there is evidently neither the inclination nor power to improve, leases should be of limited duration. When there is any intention of farming a mehal, with a hope that the farmer will improve, leases to the ryots should not extend beyond the current year, for which period all ryots under all circumstances have a right to demand that pottahs should be given to them.

"The above rules of course do not apply when ryots have a right of possession at fixed rates, but no cultivators can claim such a privilege except those protected by section XXVI, Act I of 1845."

In paragraph 54 are given the directions with reference to enhancement—"When enhancement of rent may be imposed by a settlement officer, he must be careful in resumed mehals to cause the notice required by section IX, Regulation V of 1812, to be served on the ryots, otherwise the owner, should he engage, will be unable to recover the rents, which are the foundation of his settlement."

22. In the rules for the management of khas mehals occur the following instructions with reference to mehals held "hustabood," i.e., directly by the proprietor without the intervention of any middleman.

"Pottahs and kaboolyuts to be interchanged."

"There should be an interchange of pottahs and kaboolyuts with every tenant to hold good for the current year, and till a more detailed inquiry and adjustment can be completed. It is not intended that pottahs should be forced on the tenants, but if the jumabundee is fair, talookdars and ryots are seldom unwilling to have the protection of written engagements.

"*Note.*—Of course these instructions do not apply when it is resolved to measure and assess an estate under Regulation VII of 1822. An operation of that description obviates the necessity of the preparation of any other than the introductory jumabundee, and it should be undertaken as soon as officers qualified for the duty are available."

"This jumabundee having been completed, and the establishment reduced to the strength required for the duty of collecting the rents, the Collector or officer in charge of the mehal should, at his leisure, commence the preparation, village by village, of a more complete and trustworthy jumabundee.

"Prevalent rates to be ascertained"

"The prevalent rates should be ascertained and recorded, with the understanding that they will be regarded as a general guide only in framing the jumabundee, and that increase or decrease, should any peculiar circumstances call for it, will be made in the assessment."

Khoodkasht and Kudeemee ryots.

23. The distinction between the position of khoodkasht and kudeemee ryots and other ryots is clearly laid down in paragraphs 17 and 19 of the rules. "The claims of khoodkasht and kudeemee ryots should be carefully respected. Should cultivators of this class be found holding lands at lower rates than other ryots occupying lands of a similar description, their rents should not be raised without considering their right to continued occupation at the rent heretofore paid; some of these ryots having now paid since 12 years previous to the decennial settlement, they have a lien on the soil beyond wages of labour and profits of stock. By prescription they have a proprietory interest; to raise their rents is to deprive them of that proprietory interest. They are entitled to a full investigation of their rights under the resumption laws before being subjected to any enhancement.

"Rents paid previous to the possession of Government, if ascertainable, to be maintained."

"Other talookdars and ryots are liable to assessment at the market rate, that is, at the rate current in the neighbourhood; but if the rent paid for three years previous to the possession of the Government can be ascertained, and it should not appear that such rent has been without cause reduced below the market rate, then, under the orders of Government, dated 28th November 1837, circulated on the 23rd January 1838, a lease should be granted to each ryot at such rent for 3, 5 or 20 years' as may be deemed desirable, with a distinct engagement that during the term of the lease he will not be required to pay any addition to the specified rent whatever kind of produce he may cultivate. It is to be borne in mind that if they have hitherto held at rates below the market rates and increase is to be levied, it is necessary that notice of the increased demand be served on or before the month of Jeyt, under section 9 Regulation V of 1812."

24. The practice of ousting a ryot who failed to pay enhanced rent is specially noticed in Rule 20, and condemned as illegal though prevalent.

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The varying character of a ryot's tenure is referred to in Rule 31—

"In villages actually held hustabood, a revision of the jumabundee will be necessary. each year, and as ryots oftentimes cultivate more than they have engaged to hold, annual adjustments of the jumabundee for the year past are in some parts necessary. These operations may well be conducted simultaneously in the months of Phalgoon and Jeyt. Separate papers must be prepared—one showing ryotwaree, the land and jumma of the ryots' engagement, the land he actually tilled, and the jumma demandable from him; the other showing the land each ryot engages to till for the ensuing year, and the jumma he engages to pay; when the jummabundee remains unaltered, of course no new engagements are necessary, but when alterations are allowed, whether for increase or decrease, new engagements should be interchanged."

"Revision of jumabundee each year in villages actually held hustabood"

25. The practice with reference to the eviction of mere ryots is given in rules 36 and 38—

"Should the tenants in arrear not liquidate the balances within the period allowed in the requisition, dustucks for the apprehension of the defaulters should be issued, and it is competent to the Collector at the same time to attach their tenures, but that is a proceeding to be avoided; it very seldom is of much avail in procuring liquidation of the balance, and oftentimes is productive af embarrassing litigation. In dealing with mere ryots it is desirable not to interfere with their possession till it becomes necessary to displace them.

Section 5, Regulation XIV of 1793.
Section 5, Regulation VII of 1799.

"Should an arrear remain due at the close of the year, if the defaulter be a mere ryot having no transferable interest in the soil, he may be summarily ousted and his lands given to another; but if he have a transferable interest, that interest should be brought to sale under Act VIII of 1835."

The above extracts show in my opinion that—

(*a*). The right of ryots in Bengal except those called khoodkasht, or kudeems, &c were supposed to have been almost obliterated at the time of the permanent settlement.

(*b*). That Government as zemindar recognized khoodkasht or kudeemi ryots as alone having a proprietory right in the soil, and entitled to retain possession of their lands at rates previously paid.

(*c*). That other ryots were liable to assessment at market rates.

(*d*). That the jammabundi of hustabood mehals were liable to revision every year.

(*e*). That enhancement of rent was allowable under Regulation V of 1812.

(*f*). That mere ryots, *i e.*, ryots other than khoodkasht or kudeemi were liable to summary eviction on failure to pay their rent at the close of the year.

This, then, constitutes the practical interpretation put by Government itself, in its capacity of zemindar upon the provisions of the early regulation as to the position and powers of a zemindar, and as to the rights of his tenantry, These are the principles upon which Government officers have been enjoined to act in dealing with ryots upon estates, the proprietory rights in which have been acquired by Government, and upon these principles Government officers have fixed rents, have revised jummabundis, have enhanced rents, have realized rents, have evicted defaulting tenants for many years.

So far as the practice of Government is concerned, I fail to find in their dealings with the ryots upon crown lands, any indications of the recognition of a living tenant-right amongst any class of ryots, save and except those known as khoodkasht or kudeemi.

In the same way, zemindars have acted for many years in the belief that they had the same powers with reference to their tenants as laid down by Government. In this belief they have bought and sold lands and managed their estates, and in this belief, too, the ryots have lived for many years.

26. I do not here stop to consider the various modifications in the rights of zemindars effected by Act X of 1859. It will be sufficient to mention that sundry very important modifications of these rights were introduced by that Act; that such modifications were strenuously resisted as infringements of the rights of zemindars under the perpetual settlements, and that these modifications have, although unwillingly, yet practically been accepted by zemindars, as the basis of the relations between them and their tenants.

27. The proposed Bill, however, goes very much further than Act X of 1859. It further curtails the rights of zemindars by very largely extending the rights of occupancy to be given to the ryots. It abolishes the power of distraint. It limits the power of enhancement. It creates tenures and sub-tenures; it in fact aims at giving almost all classes of ryots fixity of tenure at a Government valuation of the land.

28 I do not defend the zemindars with reference to their conduct towards their ryots in many respects, I fully acknowledge that in many points they have fallen short of what was expected from them at the permanent settlement. But on the other hand, I cannot see that it is just to them, whatever may have been their failings, to deprive them of rights over their ryots which were practically admitted to belong to them at the time of settlement, which have been exercised by Government as zemindar for years, and which so far as I know, have been believed universally to attach to the position of a landholder in this

country. Nor does it seem to me to be just to declare the existence of rights on the part of ryots, which were, and were declared by the Governor General himself, to be practically dead in Bengal, and which, so far as I know, are not claimed as belonging to them by the ryots themselves.

29. The proposed Bill seems to me, on the principles above referred to, to contemplate grave infringements on the rights of zemindars as hitherto recognized, to destroy such recognized rights, and to give the landholders no compensation for such damage done to their interests. It seems to me, moreover, peculiarly unjust to contemplate such restrictive legislation with reference to the rights of zemindars when the whole tendency of recent policy on the part of Government has been to throw more responsibitities on the landholders in the way of providing funds for improvements connected with lands. We take from zemindars cesses for roads, for public works, for embankments, for drainage purposes, and while doing so we introduce a law the certain result of which will be to embroil them with their tenants, to increase their difficulties in realizing their rents, and to diminish their local influence. We take this opportunity of declaring rights to belong to ryots, which, whether they existed or not in the time of the old village communities, had almost certainly disapppeared during the Mogul administration, and at the time of the permanent settlement which we ourselves have by our acts declared for years to be non existent, and which the ryots themselves do not claim and do not believe themselves to possess

30. The discussion of the details of the Bill, with permission of the Board, I must reserve until I have more time to study them, and to make enquiries regarding their practical effect on the relations existing between landholders and their tenants. I have indicated above my opinion that the radical changes which in the Bill it is contemplated to introduce are not called for, and would in my opinion be injurious to both parties. I fully recognize the necessity of making some modifications in the existing law with reference to enhancement in the interests both of zemindars and ryots. At present, practically, the zemindar cannot enhance, except after an expenditure of time and of money which deters most landholders from asserting their rights in this respect. The ryots in most cases in which enhanced rent is secured by the zemindars compromise with their landlord, and agree to pay him something rather than subject themselves to the harassment of enhancement proceedings, which, even if they end unsuccessfully for the zemindar, are harassing and costly to the ryots It is however a mistake to think that the zemindar is constantly enhancing his rents. Such a procedure would very soon end in his getting no rent at all, and zemindars, however desirous they may be of securing their share of the increased value of the land which they own, are not so blind to their own interests as to adopt a course which they know must end in their being deprived of the income from rents which they have hitherto received.

31. I think that in the existing state of the country, and of the law relating to enhancement, it is necessary to fix some limit up to which rents should be enhanced, and to determine some period within which, after enhancement proceedings have been finished, no fresh enhancement of rent should take place. It will also be necessary to determine the shares of the increased value of the land which the landholder and the ryots should respectively receive without further enquiry and discussion of the question. I am not prepared to say what limit of time should be fixed, nor what shares should be apportioned. The circumstances of all districts in Bengal are not the same, and I can quite conceive the apportionment of such shares in the same manner for every district in Bengal might cause injustice sometimes to landholders and sometimes to ryots. Full enquiry upon this point is necessary.

32. As I, however, before indicated, the zemindars should be allowed to realize their rents in a more summary manner, than at present. Details upon this point, I shall be prepared to give after further consideration.

33. I do not object to an occupancy tenure being made transferable. But there are various conditions attached to this tenure in the Bill, all in favour of the ryot, to which I would be disposed to object.

34. I am not prepared to support the proposal to abolish the law of distraint, nor would I support the introduction of the doctrine of merger, a doctrine which *quoad* the rights of landlords and tenants is certainly new to this country.

35. The creation of a new tenure, the extension of the right of occupancy to three years holding of land, and sub-letting by occupancy ryots, I do not think just to the zemindars.

36. The decision of rent questions partly by the Civil Courts' and partly by the Collector as proposed in the Bill, could not, under the procedure therein laid down, be carried out.

37. On these, and many other points connected with the Bill, there is much to be said; but the limited time allowed to local officers prevents me from discussing them at present in detail. I think it best to reserve giving expression to the grounds of my opinion on such points until I have had further time to enquire into them.

N. T. W —Reg. No. 10344J—118—13-1-81

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No. 14R, dated Rampore Beauleah, the 1st February 1881.

From—Lord H. Ulick Browne, Commissioner of the Rajshahye and Cooch Behar Division,

To—The Secretary to the Board of Revenue, Land Revenue Department.

As directed by the Board in your endorsement No. 659A, dated 30th July 1880, enclosing a copy of a letter No. 2286½—1322½LR, dated 15th July 1880, from Government, I have the honour to report on the draft Bill proposed by a majority of the Rent Law Commission.

2. After I had commenced this report I received Government circular No. 1, dated 3rd January 1881, and, as directed therein, I will confine myself to the more salient points in the Bill, and to the Government letter to the British Indian Association. I enclose an abstract of the opinions given by the four district officers of this division, who submitted reports on receipt of the first letter of Government to the address of the Board, and with reference to the special allusion to Rungpore, made in paragraph 3 of the first Government letter in regard to section 11 of the Bill, I invite attention to what Mr. Glazier, who has had long experience in that district, says on the point, and which is quoted *verbatim* in the abstract.

3. The district officers do not say to what extent and with what result they have consulted different classes of people on the provisions of the draft Bill; but as regards the two classes who are most deeply interested in the matter, there can, I think, be no doubt as to what their views must be if invited to give a free expression of them, and if the provisions of the Bill are explained to those who, being ignorant of English, and being under other difficulties, have had no opportunities of ascertaining what the provisions are. Owing to the Bill not having been translated into Bengali at first it has probably been difficult to ascertain what the ryots think of the Bill, but I am sure it may be taken for granted that they would, if the provisions of the Bill were explained to them, be much pleased with the proposals of the majority of the Commission, which would confer such valuable rights on the ryots. As regards the zemindars, I think similarly that it may be taken for granted that they would hold a precisely contrary view. But it is unnecessary to say anything more as regards the zemindars, because they have already expressed their opinions at public meetings, and in memorials, letters, &c., and further propose to address Government again on the subject, which indeed they have been invited to do.

4. The most important provisions in the Bill are those which confer valuable rights and privileges on the ryot, generally at the expense of the zemindars, whose full proprietary rights (according to my view of what is included in such rights) would be curtailed; whose incomes would be restricted; and whose estates would, I think, fall in market value accordingly. It seems to me that the right to ask what price you like for your own property, whether it be land, or a horse, or anything else, is a valuable proprietary right, which would be abolished and a limit imposed on the zemindar's rent by the proposed extension of rights of occupancy. Similarly it seems to me that, to give a ryot a right to occupy land as long as he pays his rent, to limit the rent he is to pay, and again in some cases to make the holding transferable, is to really make him a proprietor in a lesser degree.

5. The provisions referred to seem to me to go too far, and to be unnecessary and objectionable. Before, however, specifying them and my reasons for objecting to them, two preliminary observations appear necessary. The Bill adopts Mr. Field's Digest as a statement of the existing law, and it is scarcely necessary to remark how generally correct the Digest is. But it includes as law what is called in England common law or Judges' decisions in cases. It seems to me, with every respect for the authority of Mr. Field, that it is incorrect to treat as *law* the decisions of the High Court on points connected with the rent laws; for whereas Judges at home almost invariably follow previous decisions on a particular point, the Judges of the Calcutta High Court have never felt themselves bound to do so in cases under the Rent Law unless the Judges happened to agree with their predecessors. The conflicting decisions of the High Court under the Rent Law are well known, and the final settlement, one way or the other, of many points has been one of the objects held in view by most who have wished for some years past to amend the law. Until the points referred to are settled, however, it is impossible to say which of two views on each of them will be taken by the Judge who happens to try the suit, and thus it seems to me that Mr. Field is inaccurate where he treats some individual High Court's decisions as law. My reason for drawing attention to this point is that, if everything entered in the Digest as law is held to be law, it will mislead those who look into the Bill by inducing them to think that fewer changes are in fact made by it than is really the case, as while it is now a chance which view may be taken by a Judge tomorrow, the Bill finally decides such points by sections of real law. The second observation is that even when a section of existing law is only reproduced in the Bill, its effect is changed and perhaps much enlarged by certain other provisions, or even by definitions in the Bill, and it is thus necessary to look closely even into sections in which there seems at first sight to be nothing new.

To give an instance of this, section 19 of the Bill corresponds with section 6 of Act X of 1859 and Act VIII of 1869 (B. C.) as regards giving a right of occupancy after

twelve years ; but the word "lease" and not "pottah" is used. Now the word pottah by itself means merely a written agreement under which land is held, the word "meadee" being prefixed to the word pottah when it is desired to signify a lease. The word lease in ordinary use means a letting for a term of years, a reading which is accepted in the two Acts cited by the expression, "and let by him on lease for a term, or year by year." But on turning to the definitions in section 3, page 133 of the Bill, "lease" and "pottah" are used as synonymous terms. The effect of section 19, and the definition clause combined, is that a ryot can acquire a right of occupancy when holding under a lease for a term of years, and thus the Bill decides by a distinct legal provision a point that has been the subject of conflicting decisions of the Hight Court for a long time.

6. The following are the most important provisions that appear to me to go too far in the direction stated.

Sections 8 to 11, and portions of sections 21 and 23, conferring important rights on different classes of tenants in limitation of the landlord's rights, and also of the rent he is to obtain from his land. (The limitations of the rent go much beyond the existing rule of proportion against the zemindar.) Section 24 which, like section 19 and the definition clause "lease or pottah," indirectly decides against him an important point which has been the subject of many conflicting decisions of the High Court as to whether a right of occupancy can or cannot be acquired when a ryot holds under a written lease for a term of years. Chapter IV conferring a virtual right of occupancy on ryots who have held for three years with compensation for disturbance when unwilling to pay an enhanced rent, a right which even the 12-year ryots have not exercised. Sections 41 and 42, creating an heritable, transferable, and devisable right of occupancy in land used for building and other non-agricultural purposes. Section 77 (*b*) interfering with long established custom and rights in some parts of the country Section 83, having the same effect in Behar, and reducing the income of the zemindar where custom now gives him more than one-half of the gross produce. Section 81, which gives a right of occupancy after three years in Behar.

7. I consider these provisions objectionable on the following grounds; and it may be observed in passing, that while none or scarcely any of the provisions referred to are recommended by the Commission unanimously, chapter IV is in reality recommended by a minority only, being inserted as a compromise. I think that such important changes, deeply affecting the rights and pecuniary interests of a large and important class in a vast country should only be made on very strong grounds, such as for instance, the grounds advanced by Mr. Gladstone when introducing a somewhat similar measure for Ireland in 1870, when he supported his proposals by urging that, as good general laws and administration, and assistance in the reclamation of waste lands had failed to dispel the serious ill-feeling of the mass of the population of Ireland towards England and the Government of the United Kingdom, it was necessary to take an extreme step in a direction specially acceptable to that population, in the hope that it would put an end to what was always a serious political danger No special and strong grounds, political or other, exist in the present case, nor are they asserted by the Commission, who indeed, on the other hand, seem from a passage in their report to be unanimous in holding what is a nearly universal opinion, viz., that the ryots of Bengal are stronger than the zemindars. In fact, it would appear that the sole ground on which the Commission, or rather a majority of that body, propose such important changes in the law of landlord and tenant, is that the proposed law would on these points be in accordance with the individual views of those gentlemen as to what the respective positions of landlords and tenants *ought* to be; and a key to the general views of the majority of the Commission may perhaps be found in their adoption, in the face of Lord Cornwallis's declaration that the zemindars of Bengal are proprietors of their estates, of the politico-economical axiom that the land of the country is the property of the people of the country. I am sure that Government officers charged with administrative duties in the interior would, if asked, be almost if not quite unanimous in saying not only that there is no general feeling of discontent among the ryots in whose favor it is now proposed to sacrifice the zemindars, but that there is not even a partial feeling of that nature, and that the ryots of Bengal Proper, at all events, are, as a body, in a prosperous and contented condition. There is in addition, as it seems to me, the grave objection that some of the provisions referred to would be an infringement of the proprietary rights expressly conferred on the zemindars by Lord Cornwallis in the Permanent Settlement. Though much of Act X of 1859 can never be repealed, that is no reason why we should go further in the same direction ; and it should be remembered that the view as to Act X being such an infringement has been held by some of the most eminent of Her Majesty's Chief Justices and Judges,—men who are accustomed to weigh the meaning of words such as those used in the Regulations of the Permanent Settlement. Lastly, I think the passing of such measures into law would create no little discontent among the zemindars as a body, though being loyal and well affected they will bow to the decision of Government.

8. There are also in the Bill some others provisions of less importance which seem to me to affect the rights and interests of the zemindars unfairly. For instance, I have been unable to find that any one of the provisions putting an end to the conflicting decisions of the High Court is in favor of the zemindar. He is debarred from acquiring a right of occupancy in land which is a portion of his estate, and that even when he is virtually forced under certain circumstances by clause (*b*) of section 207 to bid for an occupancy tenure at a sale in execution of decree. Similarly, the suggestions as to a law of merger would operate against the zemindar. Again, by the latter half of section 64, the zemindar

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seems to me to be unduly restricted in the recovery of his rent, and so he is by clause (*e*) of section 20 in the matter of ejectment for non-payment of rent.

9. The Bill is remarkable as regards the omission of some provisions which were more certainly looked for than any that are found in it. For some years past there has been a very general demand on the part of the zemindar, supported by Government officers as a body, and by the Lieutenant-Governor himself, for a legal measure to provide a more speedy and effectual procedure for the recovery of uncontested arrears of rent. The Governor-General in Council, moreover, authorized the introduction into the local Legislative Council of a Bill to provide for this. Nevertheless there is no provision for this in the draft Bill.

10. I would omit chapter VI of the Bill, dealing with land used for building and other non-agricultural purposes, as unnecessary legislation (independently of the special objection I have already taken to sections 41 and 42). As regards chapter VII on merger, if it is really necessary to legislate on the point as a guide to the courts, I should much prefer a short section saying that no subordinate right or interest shall be merged in a superior one, to the provisions in that chapter. The following provisions appear to me to be inexpedient, viz., the giving of a right of occupancy in the same land to more than one person or interest; the giving of it to any one but the actual cultivator; the definitions of tenures and undertenures, especially in such an arbitrary way as a standard of 100 bighas The procedure of chapter XV seems too elaborate, and as the weak point of our administration is that district and sub-divisional officers have more to do than they can get through properly, I think the proposal to employ the Collector to enhance rents of estates whenever a zemindar wishes him to do so is very objectionable. I concur in Mr Dampier's separate note on this point. Chapter XVIII also seems to me too elaborate, and the provisions of section 201, &c. quite insufficient to expedite the realization of amounts decreed to the extent that is desirable. Admitting the necessity of special attention being paid to the ryots of Behar, I think that what has proved sufficient in Bengal to make the ryots stronger than the zemindar would have a similar effect in Behar, and that, instead of legislating as proposed in sections 81, 82, and 83, a real and sustained attempt should at least be made to explain to the ryots the existing laws as regards a right of occupancy, and to induce them to settle on the same land for twelve years.

11. Always excepting any provisions to which I have already specially objected, I approve of the general purposes of the following chapters:—Chapter VIII, under which a system of registration of transfers of tenures, undertenures, and occupancy holdings is proposed; Chapter IX, proposing fixed dates for the payment of rent; section 59 is an excellent addition to the existing law, but I think the deposit of rent should be as at present in the Moonsiff's courts, and not in the Collectorate and sub-divisional officer's; Chapter X, which deals with a source of great trouble to ryots when there are disputes between shareholders, but I would distinctly add that the receipt of a common manager so appointed shall be a full acquittance, if the amount of rent due by the ryot is paid to that manager; much of Chapter XI, which contains many useful sections, but it seems to me that sections 71 and 74 are inconsistent with each other; Chapter XIV on limitation; and most of Chapters XVI and XVII.

12 In my opinion a new Rent Law should contain the following provisions, in addition to those already in the Bill which I have mentioned as improvements, viz. provisions for (*a*) a summary procedure for the realization of rents when claimed at the rate previously paid; provisions for (*b*) conferring on the ryot a right to sell or transfer his occupancy tenure on certain conditions, and, *as a consequence*, (*c*) provisions for conferring on the zemindar a right to sell occupancy tenures in a summary manner; (*d*) provisions for facilitating the enhancement of rent; provisions for enabling the zemindar to eject any ryot or tenureholder for non-payment of rent if he prefers it to selling the tenure, or right of occupancy in the following cases,—viz. where the zemindar proceeds by suit and obtains a decree, and when the rent, interest, and costs are not paid into court within 15 days after the passing of the decree; provisions to allow the landlord a right of re-entry and acquisition of the rights of a tenureholder or occupancy-holder in cases of ejectment; provisions making it compulsory on the courts to award 25 per cent. interest or damages to the landlord in cases covering the three following points,—(1) when rent is claimed at the former rate, (2) when there is no just excuse on the ground of a bad season, inundation, &c., for non-payment, but (3) where on the contrary there is, in the opinion of the court, a combination not to pay rents, or a persistent annual failure on the part of a ryot to do so without good grounds; provisions giving the zemindar, as suggested by Government, a right of pre-emption at sales of rights of occupancy; and provisions declaring that no one but the actual cultivator of land can acquire a right of occupancy. The remaining provisions that I should like to see adopted will come in as subsidiary ones, or details under headings A, B, C, D above, in regard to which I have a few special remarks to offer.

13 As regards a summary procedure for the realization of arrears of rent at the previous rates, a power of distraint should in my opinion be retained, and I think the plan suggested in paragraph 6 of Government letter No. 3295, dated 10th December 1880, to the British Indian Association, under which the distraint would be done through the court, would be a great improvement, especially in cases where there is no tenure or right of occupancy. The procedure might, however, impose too much work on the civil courts if there was no other summary procedure, and I should myself prefer one of the two

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following courses for adoption in all cases in which there is anything in the way of a right to be sold, viz., either a summary suit procedure such as was proposed by Government not long ago, or else the application of the simple and summary process of sale hitherto in force for putnee tenures. Having thought over the point during the last year, I have come to the conclusion that this latter is the best solution of the question. It certainly has the merit of simplicity, and if a system of registration of tenures and occupancy holdings, such as is proposed in the Bill, is adopted, I cannot see why there should be any more objection to sell such tenures and holdings than to sell putnee tenures. I would allow the zemindar to petition for sale four times a year, on any date after a kist of rent is due, and then the procedure would be as at present in the case of putnee tenures; but I would add a provision that the tenureholder or ryot must, in order to prevent sale, pay in addition to the rent a small fixed sum to cover the cost of the stamp and the agent's fee for writing and filing the petition.

14. The plea of the zemindars that to allow a ryot to sell an occupancy tenure is to confer on him the right of a co-proprietor is worthy of full consideration, though I do not myself think the plea should stand. In Ireland the right of the tenant in Ulster to sell his tenancy has also been recognized by the landlords, and has never been considered as an infringement of their proprietary rights. I would make the occupancy holding (always provided that no right of occupancy can be acquired in less than twelve years) transferable on the conditions stated in the Bill, but *also* subject to two provisions, and then only if a corresponding real boon in the same direction (viz.that of summary sale) is given to the zemindars, as unless that is done the concession of making the holding transferable should not, in fairness to the zemindar, be made to the ryot. The provisos I would suggest are first, that no rents be due at the time of the transfer; second, that the transferee or purchaser, &c., of the occupancy tenure shall be resident, and the actual cultivator of the whole of the tenure transferred either himself or through relations and labourers.

15. I have already suggested that a power of summary sale of tenures and occupancy holdings should be conferred on the zemindar, and this concession would, I believe, reconcile the zemindars to the grant to the ryot of the right of transfer and sale of the holding.

16. The remaining important question is how to simplify and facilitate the enhancement of rent. It is a simple matter when enhancement is sought on the first, second, or third grounds specified in section 22 of the Bill. No landlord will sue to enhance on the first ground, unless he has good or fairly good evidence of the facts as regards the rates. And it may be added, speaking generally, that the enhancements effected since Act X of 1859 was passed have had the effect, so to speak, of nearly working out this ground of enhancement, *i.e.*, with rare exceptions, the rates are the same in all estates near each other and with similar advantages, and thus very few suits to enhance on this ground will be instituted in the future. The second ground is a mere matter of measurement, and the third is generally based on an inundation of a large river depositing rich silt over the land. It is in fact only with reference to the fourth ground, viz. that the prices of produce have increased from general causes, that any amendment of the law and increase of facilities are required, and in my opinion it can be effected without introducing any new mode of enhancement to disturb men's minds I consider, with all respect, that the proposal for a table of rates made in paragraph 5 of the Government letter of 10th December, accompanied. as it is, by another proposal to prescribe a maximum* limit of rent, would be an unjustifiable interference with the rights of the zemindars, *unless* it is left entirely optional to them to resort to it or to another satisfactory process which should be also provided, while I am decidedly against imposing on the executive officers of Government the duties which this proposal and the scheme in chapter XV of the Rent Bill would involve. Apart from these considerations, I doubt if the plan of a table of rates would, whether with or without the maximum limit of rent, always effect the object in view. *With* the limit it might be found that the zemindar would get no enhancement at all because he already received 25 per cent., even though it were proved that there had been a great increase in the valuation of produce since the existing rents were fixed. *Without* the limit the want of any real basis on which to fix the table of rates might have a similar result. Who can say what any individual officer might think "equitable," and "a reasonable profit," and in how many cases he would give any enhancement at all?

It seems to me that if only a good annual record of prices is kept in every district, enhancement will become an easy matter, when there are grounds for it, under the main principles of Act X of 1859. I do not think the list of prices now published in the Gazette is sufficient for this purpose The prices should be recorded for as many localities in each district as might seem desirable on an enquiry by the Collectors, to be made on the passing of the new Rent Law, and should be published locally, as well as in the *Calcutta Gazette*. I do not see that anything more is required than this, unless it be in special cases where zemindars have a difficulty just now in establishing the prices that prevailed when the existing rents were fixed. This difficulty would not be often encountered, however, as prices can easily be ascertained as regards the period since 1859 during which the rents of so many estates have been fixed by enhancement. A special provision for an enquiry to

* It may be remarked in passing that in settlements, Government take a good deal more from the zemindar than one-fourth of his receipts from the land.

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be made by the Collector as to former prices on the passing of the new law (his decision being appealable to the Commissioner) might be made to deal with exceptional cases, prices being recorded for two years, viz. 10 and 20 years ago. The only action in detail on the part of the executive officers that seems to me to be advisable is in the cases contemplated by section 112 of the Bill, when a special officer (in preference to the overworked Collector) might be appointed, as suggested by Mr. Dampier, by order of the Lieutenant-Governor, to prepare a settlement jummabundee with all particulars of the lands held and the rents then payable by the ryots. In such cases, in order that all the matters at issue between the parties might be decided at once, the special officer should be authorized either to fix the rents on the basis of the rents paid for lands with similar advantages and of similar qualities situated as near to the estate under treatment as possible, or else to decide to the best of his ability what were the prices of produce when the rents were last fixed, and then to enhance them on the fourth ground.

R. M.—Reg. No. 940J—132—30-4-81.

ABSTRACT OF REPORTS BY DISTRICT OFFICERS.

From the Collector of Dinagepore ... ... Mr. E. G. Glazier.
" Officiating Collector of Rajshahye ... " C. A. Samuells.
" Ditto of Pubna ... ... " J. Posford.
" Ditto of Rungpore ... " W. H. M. Gun.

(The other district officers did not report.)

Mr. Glazier is glad to find the dictum of the Rent Law Commission that 'the and of a country belongs to the people of the country,' in place of the theory that the land and ryots are the property of the zemindars.

Mr. Posford is only inclined to take exception to the proposed provision of compensation for disturbance, the facility for rent suits veering from the civil to the revenue courts, and the growth of a right of occupancy within a right of occupancy.

Chapter I—of tenure-holders and under tenure-holders, Sections 1—15.

Mr. Samuells favours the 100 bigha limit to a ryot's holding if an arbitrary limit must be fixed, but he sees no reason for limiting the enhancement of rent. The amount previously paid should not operate to reduce that which is justly due.

Mr. Posford favours this 100 bigha limit, as is appears a liberal (but workable) size for a ryot's holding.

Mr. Gun objects to this arbitrary distinction, thinking there can be, practically, very little doubt as to whether a man is a tenure-holder or a ryot, whatever the amount of land held by him may be.

Mr. Glazier approves of the proposed distinction, if it can be carried out without taking away the property of the jotedar class. He thinks a jotedar should have the option of proving whether he entered on his tenancy as a ryot, *i. e.*, for purposes of cultivation, and then be entitled to abide by the ultimate test provided for ryots of his standing. The deed by which the tenancy was entered upon would define whether the tenant was a ryot or a jotedar. In his paragraph 14 he says:—" The effect of including in the class of tenure-holders all ryots who hold more than 100 bighas it is difficult to forecast. According to road cess returns, the Rungpore rent-paying tenures collect a rental of 28 lakhs, and the tenure-holders retain 52 per cent. of that sum as their profit. The number and rental of the tenures as classified under the draft Rent Law will be much less, as for the purpose of road cess valuation every ryot who has a ryot under him is classed as a tenure-holder. But it may be taken as a typical case that one of these jotedari tenure-holders collects Rs. 100 from his ryots when he pays Rs. 50 to his landlord. The effect on his position under the operation of the enhancement proceedings of section 9 would seem to be—

	Rs.
Collections	100
Allowance for expense of collection	10
Balance ...	90
30 per cent. being maximum allowance of profit	27
Maximum rent to be paid ...	63

being an additional rate of 13 per cent. on the total collections. This addition, by a process of enhancement of 13 per cent. on the very large collections of the tenure-holders of Rungpore, would amount to a very serious transfer of property from the jotedars to the zemindar."

Thus, he goes on to say, the jotedars, who are the backbone of the country, who effect agricultural improvements, introduce new staples, and carry on the local trade, would be serious losers. They would have their collections assessed on the actual payments of the ryots, and would not be able to claim, as ryots can, the advantages of an ultimate test. If the maximum test of one-fourth be modified to one-sixth or one-twelfth, the jotedar would be better off as a ryot than as a tenure-holder.

Chapter III—of ryots who have held land for twelve years, and acquired a right of occupancy.

Mr. Gun considers it will give rise to much confusion if sub-tenants of occupancy ryots obtain similar rights. They are practically mere tenants-at-will. He does not object to parties contracting themselves out of the operation of the law. He would deny to an occupancy ryot the privilege of mortgaging his holding, but considers the holding should be saleable in execution of any decree, as it would increase the ryot's credit.

As to section 21 the maximum rent in kind should not exceed 40 per cent. of the gross produce.

He approves of sections 22 and 23, but thinks it would simplify matters to omit Chapter IV, and declare that occupancy rights should attach to all ryots holding land for three years or more.

Mr. Posford objects to sub-occupancy rights growing up in the holdings of ryots who have occupancy rights. Government looks to the zemindars for land revenue, they to their under-tenants for rent, and these again to their ryots. When we go down to holdings or less we have gone far enough.

Mr. Samuells considers the provisions of Chapters III and IV intricate. Section 19 he thinks requires so much elucidation as to deprive it of its value. Some general principle should be laid down to cover all the explanations. The Bill in endeavouring to be too precise, threatens to become unwieldy. Restraint of mortgage, section 20 (*a*) is objectionable. Improvident habits will not be cured by curtailing the rights of property.

The proviso to clause (*e*) should be cut out. Landlords should not be allowed to contract themselves out of the reach of the law. Sections 23, 24, and 25, are too elaborate. It will be enough to lay down the principles on which enhancement may be based, and leave the courts to provide a limit in each case.

Mr. Glazier strongly upholds the proposal to allow a right of occupancy to a ryot of a ryot, thinking that otherwise a great body of the ryots will be left unprotected and may become a source of political danger. He sees no difficulty in giving this right, and considers the sub-ryot entitled to as much protection as the ryot. There will indeed be classes of ryots, and the rates paid by each will have to be carefully distinguished.

He considers the test-rates of section 23, clause *c*, 25 to 30 per cent. on the value of the produce a backward step and unsatisfactory. Sir Richard Temple proposed 20 per cent. as the rate for non-occupancy, and 16 per cent. for occupancy ryots.

Zemindars he (Mr. Glazier) has consulted, favour rates ranging from 25 to 16 per cent The revenue authorities subject to the control of the Board should be allowed to apply these rates according to the circumstances of the district or estate in question.

Old ryots of 30 or 40 years' standing should enjoy a special test-rate of $\frac{1}{12}$th. The better class of zemindars consider that these old ryots should be specially favoured. Moreover long lapse of time may disable these old ryots from proving their rights. Besides this, in the eastern districts where rents are low, ryots may find their rents getting doubled time after time. Government should thus reserve powers to adopt a test-rate from $\frac{1}{6}$th to $\frac{1}{12}$th for old ryots according to the circumstances of the district. It was, moreover, ruled in 1780 that a zemindar could not change the ancient mode or rate of collecting the revenue without the consent of Government. (*Vide* Committee of Revenue, Behar land case in Rungpore.)

Chapter IV—of ryots who have held land for three or more, but less than twelve years, sections 26-31.

Mr. Gun's remarks are noted below.

Mr. Glazier fully endorses the proposal that ryots who have been three years on the land should have the status of an occupancy ryot, and quotes from paragraph 31 of Government resolution of 23rd July last, on the Khoordah settlement, that most of the ryots in Khoordah are recognized as possessing rights of occupancy so long as they pay the rents assessed on their lands by the State.

Mr. Posford considers it open to Government to assign certain rights to the ryots described in this Chapter, but does not see why they should be entitled to a year's rent at the enhanced rate if they are turned out of their holdings for refusing to pay it. He thinks the ejected tenant should get a valuation of the improvements he has effected, the same to be paid by the incoming tenant, or failing him, by the landlord.

Mr. Samuells would allow approved tenants who should desire to settle the right to hold on to their land on reasonable terms, but on the whole does not consider there is reason in this country for legislation on the subjects contemplated in this Chapter. Section 31 he considers too arbitrary. He appears to think it would be enough to determine:—

The principles of enhancement.
The principles of ejectment.
The principles of abatement.

Chapter V—of ryots who have held land for less than three years, sections 32-35.

Mr. Samuells considers it useless to classify ryots unless the transition from one class to another be accurately recorded in a public office. Unless these rights are claimed and recorded they must not be pleaded in court. Rent in kind should not exceed 50 per cent. of the gross annual produce.

The above agrees with Mr. Glazier's remark that there will be classes of ryots, and the rates paid by each will have to be carefully distinguished.

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Chapter VI—of the use of land for building purposes.

MR. SAMUELLS approves of the provisions of this Chapter. So does Mr. Gun, but he thinks the rate in section 42 low, and that it might be fixed from time to time in the Collector's table of rates.

Chapter VII—of Merger.

MR. SAMUELLS, and MR. GUN approve of the provisions of this Chapter.

Chapter VIII—of registration of transfer of tenures, under-tenures, and occupancy holdings, sections 46-54.

MR SAMUELLS fully approves of the provisions of this Chapter. So does Mr. Gun, thinking they will prevent confusion and litigation.

Chapter IX—of rent, instalments of rent, receipts for rent, deposit of rent, apportionment of rent, and hypothecation for rent, sections 55-64.

MR. SAMUELLS and Mr. GUN, express approval.

Chapter X—of coparceners, sections 65-70.

MR. SAMUELLS thinks these provisions salutary and much needed.

MR. GUN is inclined to think that ijmali proprietors ought all to be obliged to appoint a common manager.

Chapter XI—of some miscellaneous rights of landlords and tenants, sections 71-80.

MR. SAMUELLS thinks section 80 will cause difficulties, especially when ejectment is made for non-payment of rent. An outgoing tenant should get compensation for standing crops.

MR. GUN considers that a tenant ought to have the liberty to effect all improvements he pleases without obtaining the zemindar's consent; to cut down all trees planted by himself, or the ryot from whom the holding was derived,—and to gather the crop on the ground at the time of his ejectment.

Chapter XII—of special provisions for Behar.

MR SAMUELLS thinks sections 84 and 85 should be made of general application, but section 86 would tell against the ryot in bad years. What ought to bind the parties is the original understanding on which the land is held.

MR. GUN thinks that section 82 might also be made general.

Chapter XV—of procedure for enhancement of rent, sections 95-132.

MR. SAMUELLS is in favour of a district or pergunnah rate being fixed, and proceedings in all cases referred to that standard. No provisions appear to have been made for enhanced jumabundis in ijmali estates. If each holder of an estate can apply for a rate the work will become too heavy. A settlement jumabundi, again, will require an establishment. As the provisions of this Chapter may be resorted to for purposes of vexation, some discretion should be left to the Collector, who might abstain from interference except in case of considerable difference of opinion as to the rates or tenures.

MR. GUN's chief objection to the proposed procedure is the strain it would lay on district revenue authorities. He thinks it would be enough for them to settle authoritative tables of rates for all districts, leaving the rest to the civil courts—but an exception might be made as regards the cases described in section 112—(settlement jamabundi).

MR. POSFORD considers that rent suits should be tried either by civil or revenue courts, but not by both. The Bill would appear to allow of their veering from one to the other, and this would tend to protract rent disputes and cases. Provided that parties get justice, it is well that such cases should be decided quickly.

Chapter XVIII—of procedure in suits to recover arrears of rent, &c., and in certain other suits.

MR. GUN approves of the procedure proposed, and considers the periods of limitation laid down in the 3rd schedule sufficient and not excessive.

Chapters XIII, XIV, XVI, and XVII.

On these Chapters none of the above officers have made any special remarks

N T W.—Reg No. f1809J—132—13-2-81.

No. 236 *R.*

FROM F. M. HALLIDAY, ESQ.,

Commissioner of Patna,

TO THE HON'BLE H. J. REYNOLDS.

Dated Bankipore, the 10*th March* 1881.

REVENUE DEPARTMENT.

SIR,

WITH reference to Government Circular No. 1, dated 3rd January 1880, I have the honour to forward herewith, in original, the reports submitted by the several Collectors in this division, marginally noted, regarding the proposed Rent Bill.

Patna, No. 2388R., dated 10th December 1880.
Gya, No. 39C., dated 20th January 1881.
Shahabad, No. 1662, dated 8th November 1880.
Mozufferpore, No. 1205G., dated 16th December 1880.
Durbhunga, No. 1011, dated 14th October 1880.
Sarun, No. 862, dated 15th December 1880.

2. I have since received a copy of the revised Bill, a report on which will be submitted in due course. In the meantime, I think it necessary to lay before you the views of the several District Officers in this division on the old Bill. I shall be obliged if you will return these reports when done with.

I have the honour to be,

SIR,

Your most obedient servant,

F. M. HALLIDAY,

Commissioner.

W. H.—Reg. No. 13719J—140—24-3-81.

No. 2388R, dated Bankipore, the 10th December 1880.

From—C. T. METCALFE, ESQ., C.S.I., Collector of Patna,

To—The Commissioner of the Patna Division.

IN reply to your circular No. 166R, of the 31st July last, I have the honor to submit the report called for in Government orders, after ascertaining the views of both zemindars and tenants.

The zemindars of Patna are deeply interested in the draft Bill of Landlord and Tenant. No subject of late years has excited so much universal interest as the provisions of the proposed Bill, or raised so much criticism. The views of the zemindars have been fully put forward in the petition of the Landholders' Association.

At the meeting held at Sadikpore on the 29th of November, I discussed with some of the leading zemindars five principal subjects—

(1)—The effect of the three-years' right of occupancy.
(2)—The abolition of the law of distraint.
(3)—The share of the proprietor in bhaoli tenures, and the grounds on which he claims more than a half share.
(4)—The power of the ryot to cut down trees.
(5)—The effect of registration of tenures.

I have specially considered their objections when reporting on each of these subjects. The great body of the ryots are quite ignorant of the provisions of the proposed law, and have hitherto outwardly shown no interest; but those to whom I have spoken have expressed doubts whether the law, although so favourable, will not involve them in litigation from which they not unnaturally shrink.

State of feeling on the part of the zemindars with regard to Act X.

The zemindars of Patna are quite satisfied with the present state of the law, and wish for no change. Act X has done little for the ryots.

Permanent influence of the zemindars.

The influence of the landlord has overridden the provisions of the law which conferred a right of occupancy on the twelve years' old tenant. The landlords are eager to share with their tenants the great rise in prices which has taken place during the last 16 years, and many landlords have by their action created great competition for land by offering lands to cultivators at a higher rent, dispossessing the former occupant if he refused to pay the higher rents demanded. Certain classes of the ryots have not been slow in playing into the hands of their landlords by eagerly bidding for lands which promised good crops. What has happened is this, the zemindar has sent for his ryot, and said: "I have an offer of two rupees a bigha more for your land than what you pay. Will you pay it, or throw up the land?" Many ryots have in the end, rather than lose their land, paid the enhanced rate, but many have given up their lands. The result has been a very extensive system of change of occupiers and cultivators. Tenants have thrown up holdings of which they could not pay the higher rates, and such lands have passed into the hands of the lower labouring classes, who, trained and accustomed to field labour, have, by devoting more time and energy to the lands, increased the productive power, and made the land pay more than its former easy-going occupier did who devoted less care to its cultivation. Whenever the zemindar has felt himself strong enough to break occupancy holdings he has done so. The expression amongst the ryots is, that every one's tenure has been broken except the zarwallilogue, or those who were in a position to resist enhancement and dispossession. The well-to-do maurasi cultivator has held his own no doubt, but the great mass of the tenantry have yielded to competition raised by the aggressive action of the landlords, and are now paying rents which have doubled within the last 16 years. Such of the ryots as have benefitted by the high prices and their own industry are not dissatisfied with the present state of things, but the great mass are not satisfied at having to pay the higher rates which now rule. No doubt there are numerous villages where rates have not altered. No general rule in this country holds good for every locality; but it is true, except in some villages, that the rents have doubled within the last 16 years, so that in many places the relation between landlord and tenant is strained, and much of the good feeling which once existed between the zemindars and their tenants in the district is passing away. The zemindar of Patna believes implicitly in his proprietorship in the soil. He has the Englishman's idea of landed property, and in the discussions which have preceded the writing of this report, I have not found the zemindars willing to concede one iota of what they consider their rights, or to relinquish any one part of their claim to the sole proprietorship of the soil; each proposal of this draft Bill, enumerated at pages 29 and 30 of the Note of the Behar Landholders' Association, will be contested by them, more particularly the following:—

The clauses conferring after three years a right of occupancy (section 19); making occupancy rights transferable by sale or gift (section 20); limiting the landlord's share in bhaoli rents to 50 per cent. in place of nine-sixteenths as at present prevailing; giving the tenant power to cut trees (section 77); giving occupancy ryots the right to commute rent payable in kind to an annual money rent (section 86); depriving the landlord of the power of evicting occupancy tenants for nonpayment of rent (section 20c); abolishing the power of distraint. All these claims will be regarded with disfavour by the zemindars as destructive of their rights as viewed from a landlord point of view.

Zemindars' view on bhaoli tenures.

The Patna zemindar's view is that while he is the sole proprietor of the land, he has a joint interest and responsibility with the ryots in the improvement of the soil, and that he is entitled to half the crop or its value, to secure which he is bound to find money for water-courses and reservoirs, as well as for protective works. The tenants, on the other hand, are bound to give their labour for such works as cheap as possible. The Patna zemindar considers himself entitled to one-half the produce of the soil, and when he lays out capital, he considers himself justly entitled to more. Any fixed proportion of the produce below one-half he regards an unjust share.

A bhaoli tenure is the summum bonum *of the landlord's wishes where the soil is good.*—The ryot's view of a bhaoli tenure differs in different localities. Where lands are subject to be swept by inundation, and the condition of harvest is precarious, the tenant prefers a bhaoli tenure as less risky; where the lands are high, and there is less risk of destruction, he detests a bhaoli payment, and prefers payment in cash. The landlord's views are just the opposite. He would prefer cash payment in the first instance, and a bhaoli payment in the latter case. Very conflicting, then, are the interests of the landlord and the tenant.

Present status of the peasantry as regards occupancy rights.

Owing to the constant changes of cultivators, which I have before stated, it is very difficult to ascertain the legal status of the great mass of the tenantry. Indeed, without a detailed enquiry, it is impossible to say, with any certainty, how the draft Bill, in its present integrity, will affect them.

Sixteen years ago the rents for ordinary good lands was Rs. 2-8 per bigha; the ryots are now paying Rs. 4 to Rs. 5 about Barh. About Mokameh the rates formerly were Rs. 3 to Rs. 4; they are now Rs. 7 to Rs. 8 per bigha. This enhancement has been made, not through the instrumentality of the law courts, but through the power of the landlord. Lands have been taken from one tenant and given to another. In many instances these higher rates have been given on the promise of a reduction in rates when prices fall. Whatever compromise has been made has been done out of court. The impression on my mind, when I have conversed with ryots, and I must have talked with hundreds, is that they feel litigation with their zemindars to be a losing game, in which they must lose in the end, therefore it is better to comply with their demands: they comply therefore because of their inability to resist, feeling they have no security of tenure or money to contest their case. They must either give up the land or pay the increased rent. Under the circumstances of frequent transfer of holdings, the proportion of ryots who have retained occupancy rights is uncertain. The Deputy Collector of Barh suggests that at least 60 per cent. of the ryots must have legally acquired a right of occupancy at some time or other, but that not more than 10 per cent. are at present holding the same fields for 12 years continuously. Thirty per cent. of the tenantry may, he thinks, have held their fields continuously for three years. The Subdivisonal Officer of Behar suggests that six-sevenths of the tenantry are holding lands for three years continuously. Changes in the south of the district have been less frequent than in the north. But I think that even there in a great number of instances it will be found that yearly pottahs and kabulyats have been exchanged, and that the zemindars have thus silently destroyed the rights which many tenants had under Act X acquired. In Mr. Stewart's report mention is made of one zemindar who had deliberately done this in order to destroy rights of occupancy. The Deputy Collector of Behar reports that one-fourth of the ryots in his sub-division have held only for 12 years. The Deputy Collector of Dinapore writes: "A very small proportion of the ryots in this sub-division have acquired occupancy rights: about one-eighth of the whole number have." Here, as elsewhere, the zemindars are very active in preventing the acquirement of occupancy rights by shifting the tenants from time to time. Moulvi Abdul Jubber, a very experienced Deputy Collector, is of opinion that nine-tenths of the ryots have rights of occupancy, but are too ignorant to claim them, and I may add *such then* is the condition of things that the rights which the legislature intended to give the ryots have been, through the apathy, ignorance, and inability of the ryots, and the machinations of their landlords, lost and destroyed. The reasons why the Behar zemindar is so opposed to the acquisition of a right of occupancy are the following:—

(*a*)—Feeling that a right of occupancy interferes with his *sole* proprietorship of the soil, and renders the tenant independent of him.

(*b*)—The difficulty he finds in enhancing the rents of an occupancy ryot.

The legislature proposes—Chapters III and IV—to give a ryot who has continuously held his land for three years a right of occupancy, whether held under pottah or without pottah, except in the case of khamar or sir land, the object being to prevent his being summarily ousted from his land; but what if the tenant takes no more thought of the provisions of the new section than he did of the provisions of the old section, which conferred on him a right of occupancy. His status will in no way be improved. In place of giving a limited right of occupancy after three years, I would require every tenant who claims to have an occupancy right in his holding at the passing of the Bill, to apply by petition to the Collector or Sub-Deputy Collector, stating his claim, the length of time he has held the land, and the rates and terms on which he holds. If, after notice to the landlord, the claim is admitted, the tenure shall then be registered, or if the tenure be not registered, the enquiry will, at any rate, have determined the status of the ryot. The law might enact that no such ryot shall be liable to eviction from his holding so long as he shall pay the rent determined, if he shall have been a resident cultivator in his village for

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12 years consecutively before the passing of the Act, and if the rent be contested, the civil court shall decide what that rent shall be.

Such a provision will be favourable to both zemindar and ryot. Where the ryots have no cause of dissatisfaction, and feel secure in their tenures, there will be no need of action on their part—where they feel insecure, they will have the opportunity of having recorded their status, their rent. Let the 12 years' occupancy right law hold good, whether the land be held under a written lease or not, and let the legislature lead up to the acquirement of occupancy rights by others, by establishing a system of registration of tenant-right.

In practice, such a law will be found in Behar more beneficial and practical than conferring a three years' right of occupancy. In my opinion the law as drafted will increase litigation. The practical objections to its adoption are, the zemindar will take steps to change the cultivator every two years, the result will be harassment to the tenant whom it is intended to protect; no ryot will take any interest in his land; the productive powers will be diminished, and agriculture retrograde. If the legislature be bent upon conferring the occupancy right upon the greater number of the Behar tenantry, let the law give occupancy right to every ryot who has been a resident cultivator in a village for twelve years, occupying lands therein; but I see practical difficulties unless there is a registration of the land which the ryot is holding at the passing of this Bill. Let the law assume that the ryot has the right of occupancy, and call upon him to register his rights, the plots of land being clearly defined.

Sub-tenant of mokuraridars.

Paragraph 6, *Government letter No.* 2286½, *dated* 15*th July*.—In theory there is no good reason why occupancy rights should not be conferred on the sub-tenants of mokuraridars and istumraridars who have cultivated land for twelve years; but in the case of Government pension jaghir lands, where lands have been given to pensioners who have died leaving widows and children, it would be an injustice if the sub-tenant who has cultivated the land during the minority of her children should for ever enjoy a right of occupancy with a transferable title. Occupancy rights may be given to sub-tenants of a mokuraridar of 100 bighas of land.

It is very difficult to foresee the practical result of such rights on sub-tenants, and therefore registration, such as I have advocated, would have many advantages. I would make a proviso that a right of occupancy should not be acquired by a sub-tenant having only a temporary occupancy of the land. In the absence of a written agreement, the circumstances would enable the registering officer to decide whether the tenant was a temporary occupant of the land or not

The sub-tenant of an occupancy ryot has not hitherto in practice been considered as having a right of occupancy. In Khoorda many such cases have come to light. In Patna no such cases have come before me. In cases where the superior occupancy tenant has more than 100 bighas I see no danger in recognizing the occupancy right of a sub-tenant, but I would not grant rights of occupancy to the sub-tenants of a tenure less than 100 bighas

The proposal in paragraph 8 of the Government letter, that no contract should be allowed to interfere with a right of occupancy, would lead to great injustice. Clause (*h*) of section 20 should stand.

Chapter I, Commission Report, pages 13 *to* 23, *and* 36, *sections* 9, 10, 11, *and* 12.—In this district it has been the custom to give out large tracts of alluvial lands to some one person to arrange for its cultivation. In some instances such demise may not be for a term specified, or year by year. The effect of these sections will have to be considered very carefully for each district. I find here one Nuckched Singh holding no less than 3,000 bighas of Government land. Unless bound by a limitation lease, he would become a tenure-holder with a permanent and transferable right, becoming a middleman between the Government and its tenants with a clear and certain profit of 20 per cent. for ever.

Further enquiries are being instituted as to the practical effect of these sections in the district.

Chapter VI.—Owing to the peculiar features of the country, agricultural operations are carried on in the lowlands subject to inundations, building sites are therefore confined to the highlands, where the space for buildings is very limited. Little use will be made in the district of the provisions of this chapter It will serve the purposes of factories and of goladars living in riverside villages. I have no objection to offer to the provisions of this chapter The zemindars warmly oppose these proposals.

Chapter VII.—I have no objection to offer to the provisions of this chapter.

Chapter VIII, section 51.—It is advisable to enact that the acquisition of rights of occupancy should also be registered, and the period of three months proposed should be extended to six months. The registration by a landlord in his own sherista is always a very doubtful matter. The registration should be made in the court of the nearest Deputy Collector.

Sale of occupancy rights.

The proposal of the Commission is based upon the supposition that the occupancy ryot will not care to become a capitalist farmer at a reasonable price. I do not concur in this view I believe the Behar occupancy ryot will readily sell his right when occasion arises and he is pressed for money. The mahajun will readily buy. The Behar ryot has hitherto, in large number of cases, so failed to appreciate his rights of occupancy, that he has partly, through ignorance, apathy, and inability to resist, allowed others to deprive him of it. To give him power to transfer and sell the right he has so little appreciated, is an error in my judgment, and the right should be kept in abeyance.

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Chapter IX, section 125.—The Commission states: "Under the existing law there is only one case in which rent can be deposited—viz when the tenant has tendered the rent to the landlord, and the landlord has refused to receive it." Now, as a matter of fact, a recusant tenant never does tender his rent, but invariably deposits it in court. The new Bill makes no improvement on this point. In cases of disputed rent the landlord should be required to notify, by a written notice, the rent he demands, and if the ryot disputes the correctness of that demand, he may then deposit the rent in court. At present the demand for the contested rent is made by the patwari. The tenant never makes an offer, but goes straight away to the court to make his deposit. This occurs not unfrequently in the Government Khas Mehals. No tender on the part of the ryot is ever made.

Withdrawal of the power of distraint.

I am convinced in my own mind that if the power of distraint be abolished, the zemindars will experience very great difficulty in the realization of their rents. Practically there are two kinds of distraint—the *bonâ fide* distraint, to realize arrears of rents due, and the illegal distraint, to exact enhanced rates of rent. In the latter case the law should enable the tenant to remove the distraint at once. I would continue the law of distraint, and enact a proviso that any tenant whose crop has been distrained shall deposit the amount demanded in the court of the nearest Deputy Collector, who shall give him a receipt in duplicate for the same, one of which receipts the tenant shall give to the distrainer, who shall thereupon remove the restraint. The court should have power to award costs and damages to either party, and adjudicate on the contested demand.

Chapter XV.—A perusal of paragraph 64, latter part, suggests the thought that the Collector will simply be flooded with cases. The work will be done by Deputy Collectors and Sub-Deputy Collectors, and might as well be done by the Moonsiffs. I see no benefit to be gained by a concurrent jurisdiction. The cases should be left, as at present, in the hands of the civil court.

Paragraph 65.—I have never known an instance of ryots in Behar refusing to point out their fields. The case put by the Commission is an imaginary case. The section in this district will be made an engine of oppression.

On paragraph 67 of the Commission's report I have this to say, that I apprehend no difficulty in a Collector ascertaining very accurately the general rise of the prices of staple commodities during a given number of years in a given tract.

Paragraph 68 deals a death-blow to the much-abused ticcadari system of Behar. The ticcadar, who is generally a rack-renter and receives short leases of five or seven years, could not enhance within that period. Whether the section is not an unwarrantable interference with a right is a different matter. Why should not there be a plain direction of the law, that only the landlord with a permanent transferable interest, and certain classes of zuripeshgidars, can enhance?

A special department will arise out of these sections. Amongst a Mahomedan community widows frequently are left who quarrel, and will gladly have recourse to this chapter.

Section 77.—I approve of the power given to the ryot to cut the trees he has planted or may in future plant, but it is opposed to long-established usage or custom to give him a sole right in the trees on his lands. The value of these trees over large estates is enormous.

Section 80 will be used as a means to harass a ryot Not only will he be evicted, but the zemindar will bring a further suit against him for the use of the land. The latter part of the section, from the words "*and in the event*" should be omitted. If the landlord may purchase such crops, he may purchase opium, and this section will clash with Act XIII of 1857.

Chapter XI, section 77-79.—I see no objection to the provisions of this clause.

Chapter XII.—The Rent Law Commission maintains that the metayer system of Behar has the worst features and few of the advantages enjoyed by tenants of this class in Continental Europe. It is not true that the Behar ryot gets nothing but the bare ground. The bhaoli system in this district exists chiefly in those localities where the land is most subject to drought or inundation, and where, without the good offices of the zemindar and expenditure of money in constructing reservoirs and embankments, there would often be no crop at all. The bhaoli system for such localities is the best system that can be devised for both landlord and tenant. The tenant would strongly object to pay a cash rent, and the zemindar would often fail to realize it if he could induce the ryots to pay in money in place of payment in kind. At the beginning of the agricultural season the zemindar takes every precaution that his embankments and reservoirs are in good order. The crop as soon as it is cut is garnered on the village threshing-floor, where it is threshed and sold to the *beparis*, who, wandering with their pack-bullocks from village to village, readily buy the grain at the cultivator's door when the grain is to be divided. The zemindar claims nine-sixteenths of the grain, on the grounds that he has spent money on reservoirs and embankments; that he has fought all the fouzdari cases that may have cropped up regarding water-courses and the use of water; that he has paid watchmen to protect the embankment; that he has had to bear previous losses in the past on account of bad seasons; that he has had to advance money for Road Cess and Public Works Cess, and has had to bear the loss of those ryots who have died and run away; that he has had to pay the mohatwara sir headman, and lastly, that he has given up to the cultivators all the straw from the crop.

I find the payment made by zemindar and ryot in bhaoli villages to be as follows:—

Paid by the Zemindars.

Fees to the Mohatwara, Rs. 3 to Rs. 18 (according to size of village).
„ to the weighman, a quarter seer in the maund.
Poor rate according to the number of poor in the village.
Newaz rate to the priest for performance of public worship.

Paid by the Tenant.

To the weighman	... ...	a quarter seer each.
„ Patwari	.. ...	
„ Barahil	... ...	
„ Gomashta	... ...	
„ Amin	... ...	2 kunwas in each maund.
„ Koomhar	... ...	
„ Salis	... ...	
„ Kandu	... ...	
„ Jaribkash	... ...	

A share of 10 seers in 100 maunds malik hissa, half a seer in a maund.

The two latter are abwabs. The ryots pay 9 maunds 25 seers in every 100 maunds to village officials.

In many villages where the zemindar takes nine-sixteenths, he pays all charges enumerated under the head of "Ryots' Payments," except payment to the weighman. Where he takes half the produce, the ryots bear these charges. I would advocate that nine-sixteenths be retained as the zemindar's share. At the zemindars' meeting I discussed the question whether, when money was expended on the protective works, interest on the outlay could not be apportioned among the tenants. It was pointed out that the zemindar could only recover from the well-to-do tenants, and that he would lose if he had to recover from each ryot. Moreover, as his expenditure was in cash and the price of grain varied, any attempt to recover the interest on money by its equivalent in grain would lead to great altercation and litigation. I am strongly opposed to giving the landlord and the tenant power to convert long established bhaoli tenures into nagdi tenure, and *vice versâ*, through the agency of the courts. As certain as bhaoli lands are converted into nagdi the landlord will lose his interest in keeping the reservoirs and embankments in good order, and the ryots will certainly suffer. The law intended for the benefit of the ryot leads to his injury. Lands are held bhaoli or nagdi for special reasons, and on grounds in which the interests of both landlord and ryot have been considered in making the arrangement; to interfere will lead, I am convinced, to unhappy results and very considerable litigation.

Table of village rates.—The proposal to have a Collector's table of rates does not seem to me to be a good one for Behar, where there is such a variation in the quality of the land, and where rates so differ even in the same village. General rates for a village, even if the land was divided into first, second, and third quality, would often fail to do justice to the circumstances of a particular case.

Proportionate share of zemindar's right in land.—In the course of discussion with the zemindars, I raised the question how they would view the question if the legislature fixed the landlord's proportionate share of the land, whether a quarter, one-fourth, one-sixth; such an enactment would simplify the whole question of enhancement of rent. The suggestion was strongly negatived on several grounds, (1) that as the value of produce varies yearly there would be yearly litigation; (2) that in many lands the zemindar would receive much less than at present, as he receives according to a calculation, which I have made, on lands which yield only one crop, one-third of an ordinary mustard crop, half of a castor-oil crop, one-third of a wheat crop, half of a barley crop, one-third of a sugarcane, and in the case of the ordinary pea crop, the landlord often takes 48 annas out of 61 realized by sale of the crop; where such lands yield a second crop, the ryot has the value of the produce to himself.

Clause 3, section 22, lays down that rent may be enhanced on the ground that the productive powers of the land held by a ryot have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual. Under the clause Deara lands which have been temporarily improved would not be subjected to enhancement of rent.

The law for diluvion and alluvion should be separated and incorporated in a separate chapter.

The wording of section 18 requires consideration, as to what extent of alluvion the ryot shall be entitled to. In Patna miles of alluvion are some times suddenly attached to a holding. The wording is vague, and likely to give rise to litigation considerably.

To improve the system of zemindary accounts in connection with the obligation of maintaining putwaries.—If Government would allow of the thorough organization of the putwari system and sanction the appointment of officers to supervise the yearly preparation of putwaries' accounts, then I would impose upon zemindars the keeping of an improved set of accounts. Without a supervising establishment, whatever the law may require, no effect will be given to it.

To encourage or render compulsory the interchange of pottahs and kabulyats.—I prefer to have a system of registration and record of rights, under which every ryot

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who so pleases, or who anticipates any dispute about his land or his rates, shall have the power to apply to the Collector to register the particulars of his holding, and the Collector shall, after due enquiry, make such record of rights as he finds justified by the facts in each case. The only objection I see to this proposal is the heavy work which it might heap on the Revenue establishment; but it seems to me that if the Government are determined to protect the ryots in their holdings, such an argument is worthless. Let the legislature by all means *encourage* the interchange of written documents. But I doubt if any clause rendering them compulsory will be effective. Such a clause will stir up ill-feelings and give rise to litigation The landlord will use his superior wealth to crush the ryots by law suits.

To insist on the use of counterfoil receipts.—This proposal will never be enforced and will be evaded. The present receipts which are given are often worthless, as they bear no date on which the receipt is given. The law should require the receipt to show the amount paid, the period for which it was paid, on what account it was paid, and the date on which it was paid. The penalty should be that unless such receipts bear these particulars, they should not be receivable as evidence of the nature of the transaction. Files of receipts are produced in court, and the courts have no means of ascertaining if they are forgeries or genuine receipts.

To cheapen registration.—By all means cheapen registration. At present it is too expensive for agricultural dealings Often in Court of Wards' estates I have wished to have recourse to registration, but have been prevented from so doing by the expense.

To discourage disintegration of old and new holdings whether by amalgamation or otherwise.—I am opposed to all interference in such matters. No practical result will come from it.

To allow occupancy rights to be transferable by sale.—The proposal is to forbid mortgage, but to allow the power to sell, so that an occupancy ryot may sell his holding, reap the product of his labours, and go elsewhere. I would not give him the right to sell, save with the consent of his proprietor. The objections to this course are that he may be forced by his necessities to sell his holding to the mahajun and become a subordinate tenant under him. I see no objection to this. The landlord, if he attended to the necessities of his tenantry, might forestall the mahajun by buying the right; but all such transfers must be done most openly, otherwise numerous cases will arise in which forged deeds of sales and transfers are produced.

Another objection which may be taken to transfer is that a wily debtor might, to evade payment of his debts, or to defy a decree, sell his occupancy right before the case was decided, and also that there would be numerous cases of fraudulent sales, the property being reconveyed to the original tenant. I think such cases would arise in great numbers.

There is also the objection that persons whose property has been divided by partition might buy up lands within each other's separate holdings, and disputes would again rise.

No 39C., dated Camp Budem, the 20th January 1881.

From—W. Kemble, Esq., Collector of Gya,
To—The Commissioner of the Patna Division.

Rent Bill.

As called for in your Nos. 166 and 242R circular), dated 31st July and 8th October 1880, respectively, I have the honour to send you a short note giving my opinion about the new Rent Bill.

2. Having been but a short time in Behar, I am not fully acquainted with the rent system of the province, which differs much from that of districts I have formerly been in.

NOTE ON THE RENT LAW.

None of the ryots, and but few of the zemindars, of Gya know anything about the new Rent Bill.

Occupancy ryots' three-years' clause.

The objections raised by those zemindars who have heard about it all refer to the three-years' occupancy clause. I think it a pity that this clause has been introduced. Some landlords with whom I have spoken know nothing about the twelve-years' occupancy provisions of Act X of 1859. One gentleman, the representative of a once-powerful, but now decayed, family in the south of the district, professed never even to have heard of the Act; but he and every one else knows well what a khudkasht and paikasht ryot is. Practically, I believe, there is not much difference between the two classes, and the question to be fought out is whether ryots generally who have settled down or taken land in a village have a right of occupancy or not. I have heard zemindars say that a khudkasht ryot, so long as he pays the rent demanded of him, which they admit should be a fair and equitable rent, cannot be arbitrarily turned out. It is possible that half the objections now made against the Bill by zemindars would not have been heard if it were enacted that every cultivating ryot settled in an estate should be entitled to the privileges secured by section 26 to ryots holding for more than three years. To no ryot, however, except to those having permanent tenures, would I accord any further privileges than those enacted in this section. With regard to new tenants, the zemindar must secure his interests by special written agreements.

Land held at fixed rent.

2. In Gya, in every village a large number of ryots hold a small plot of land at a fixed rent called "sikmi." To this they cling tenaciously, asserting that the rent of it never is, and never can be, raised. and though abwabs, cesses, &c., are continually imposed as a percentage on the gross rent paid by them, no zemindar, as far as I have seen or heard, ever openly and directly thinks of

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demanding an enhancement of rent in respect to sikmi land. This sikmi was at the time of the Permanent Settlement the only land for which rent was paid in money, and the rent then fixed has remained nominally unchanged.

Grounds for enhancement of rent.

The most common ground on which a ryot's rent is enhanced is that the crop is a more paying one than that hitherto grown.

For poppy an extra two rupees per bigha is generally taken, for cotton and sugarcane one rupee. This at first sight appears hard on the ryot. It is doubtful whether the enhancements could be enforced under paragraph 22 of the new Bill; but I think it is only fair to the zemindar that he should have his share in the increased profits made on the introduction of some new staples, such as cotton or sugarcane.

Take sugarcane, the cultivation of which has increased enormously of late years, and were some more capital and energy brought to bear on the ryots, would still further increase and bring in more profit in spite of the extra one rupee per bigha put on its cultivation.

The use of the mills patented by Messrs. Thompson and Mylne is increasing, and I find that any ryot who can manage to hire one does so, and works it night and day for as long as he wants it and can keep it. A zemindar should be encouraged to introduce these mills and other improvements in cultivation and manufacture; he will not do so if he is debarred from all benefits the result of increase in cultivation. Enhanced rent is demanded on other and less equitable grounds than the above, as for instance to pay for schools and hospitals. Cesses are demanded to make good the loss occasioned by the death of an elephant, to pay for a marriage, or for the expenses attendant on a public ceremony or an official's visit.

It is desirable that a shorter and less elaborate law than that framed should be enacted and enforced, enabling the zemindar to realize easily a fair and equitable rent and giving him power of enhancement on just and reasonable grounds, and at the same time protecting the ryot against extortion and oppression.

Enforcing the law.

In my opinion the great difficulty is not how such a law can be framed, but how it can be enforced.

There is not a zemindar who will not tell you that such a state of affairs as I desire to see established, is equitable and just. He would not object to the passing of such a law as he now objects to the proposed intricate and diffuse enactment.

Act X of 1859, barring the 12 years' occupancy clause, would suffice for Behar, but, as pointed out by many officers, its provisions are systematically set at nought. To realise his rent, all sorts of oppressive and illegal means are resorted to by the zemindar. As soon as crops begin to ripen "dikdars" are sent out to prevent their being cut till rent is paid; sowars are quartered in refractory villages; crops are attached.

I believe that our first endeavour should be to provide means for enforcing an existing law before inviting further opposition and making difficulties by bringing forward a new measure unpopular with the landlord and not understood by the ryot, who is too ignorant to appreciate the benefits intended to be conferred on him, and giving additional labor to the officers in executive charge of the district.

Zerat land.

The term "zerat lands," as used in the new Act, is not generally understood in this district; it means here simply "cultivation." Any land which by any means might fall into the zemindar's own occupation he might lease by written agreement on any terms he liked, but should he fail to take a written agreement, I would allow any ryot settling on that land to acquire a right of occupancy in it after the first year's cultivation.

In what are called zerat lands in the Act the zemindar has, as it were, a right of occupancy himself, which he should maintain.

The term as used in the draft Act, I believe originated among the North Behar indigo-planters. In Gya, we hear of sikmi and chikkut, bhaoli and naqdi, but not of zerat.

Payment in kind.

The bhaoli system, or payment in kind, prevails throughout Gya. In many of the estates lately brought under the direct management of Government by escheat, bhaoli tenures have been changed to naqdi or money payment tenures.

I have seen other instances where the change has been made, and it is not always acceptable to the ryots. In fact, it is a most difficult matter arbitrarily to fix what is a fair and equitable rent, and, whatever may be the law, this will always be the great difficulty to be overcome by those who have to administer it.

Arguments in favor of bhaoli.

The reason given by the ryots in favor of maintaining bhaoli are, first and generally, that the system compels the zemindar for his own interest to keep up the irrigation channels called "gilandazi."

In a Mussulman village, held by a large number of co-sharers, I found all the ryots in favor of bhaoli, because, they said, in good and bad seasons all (ryots and landlords) share alike, and all the shareholders get their share of the rent together, that is, one shareholder was not paid and another kept waiting as might happen in money payments. In Jehanabad I was told that bhaoli was best as it entailed less loss in bad years. In the escheated village of Rampore all the ryots complained that the bhaoli system had been done away with, and they complained that Government had not kept up the irrigation channels. The villagers said they would never by themselves be able to arrange with neighbouring villages about the water-courses, and without water how could they pay cash rents. One man (Chumman Koeri) said "under bhaoli I and my children can live, paying naqdi we live one year and starve the next, under bhaoli a

zemindar keeps up the gilandazi." There is great force in this. A zemindar, if he could get his rent, would not do any thing to maintain the pynes in order. In Pergunnah Urwal Mr. Chardon, the Manager for Mr. Solano, has turned all his bhaoli rents into naqdi. The farmers under him have in many instances reverted to bhaoli. In Bolkhara (one of Mr. Chardon's villages) naqdi has been kept up. The ryots asked me to use my influence to get bhaoli back I asked the thiccadar why he could not do so here as in other villages. He replied he had to pay Rs. 4,400 for the village; he would never be able to afford this if he took his rent from the ryots in kind. In the village of Hybutpore the same man had, on taking the farm, changed the money-rent system established by Mr. Chardon back to bhaoli. He explained his action by saying that there were 300 bighas of waste, which with the help of the canal water he wanted to bring into cultivation, and he found that the bhaoli system was the best to attract cultivators.

In backward and jungly districts like Gya, I believe the bhaoli system is the best.

Owing to the low price of rice, this has been an unfortunate year for introducing money payments into our escheated estates. The ryots in Gowhurpore complained to me of the change. I told them that their rents were now fixed, and that they could grow what crop they liked; but they said—"How can we pay our rents this year with rice selling at 15 *pasarees* the rupee?" Had rice been dear, they would have welcomed the change. They also said the Government had not kept up the irrigation channels properly. With a zemindar this complaint would be frequently raised with justice; and if he is paid in money rates, I do not know how he could be compelled to keep up the channels. There would be endless difficulties which now right themselves.

Arguments in favor of nagdi, or money rent.

The great argument urged by Englishmen against bhaoli is that it is an antiquated system,—a relic of barbarism,--and that it gives rise to disputes and robbery at the time of the division of the crop. I would reply—if it suits the people, let it stay, though it is out of date, until it dies out gradually and gives place to a better system. Let every facility be given to introduce money payments when both sides are willing to make the change, but do not favor either landlord or tenant. No legal enactment will make the people change their ways if they do not want a change.

As regards disputes about the division of the crop, no one has ever raised that objection to me. Disputes arise, no doubt, but I do not think that they are so numerous, or of so serious a nature, as to be made a reason for changing a system.

The reasons given by villagers for wishing money payments introduced were these. At Paibigha they all wanted money rents because, they said, under that system they could sow what crop they liked and cut it when they liked. The thiccadar said he would like to have rent paid in money, but the zemindar opposed the change. This is contrary to what I found on arrival in Mr. Chardon's property.

In Kupa the ryots at enmity with their thiccadar wanted bhaoli changed to nagdi. One man, who had a nagdi tenure, showed me his field ruined by a flood and yielding, he said, only 13 maunds for 2 bighas, value (say) Rs. 6-8. He had to pay Rs. 4 a bigha, and wished his tenure had been bhaoli. When I asked ryots whether they preferred nagdi to bhaoli, the general answer I got was, "Yes, if the rate be fixed according to the capabilities of the land"—that is, a rent proportioned to the yield.

During my tour I have found that some people like one system, some another. The same people will like one system one year, the other system the next, according to circumstances; but on the whole the bhaoli system is the favorite. It settles by itself many disputed points.

Distraint.

I am strongly in favor of keeping up the right of distraint. The crop is all the landlord has to attach in most cases if his tenant fails to pay. It is said the right is abused. I cannot admit this. There is much illegal distraint, *i.e.* distraint made without any recourse whatever to the courts; but that is sheer robbery. I do not think that the right of distraint, when legally exercised through the agency of a civil court peon, is abused. It may be sometimes.

Printed receipts and registration.

Printed cheque receipts are in themselves no safer than written receipts. They enable a zemindar to keep his office more neatly. The great desideratum is registration of all jotes in the zemindary office.

W. KEMBLE,

Collector.

No. 1662G, dated Arrah, the 8th November 1880.

From—P. NOLAN, Esq., Officiating Collector of Shahabad,
To—The Commissioner of the Patna Division.

WITH reference to your letter No. 166R (circular), dated 31st July, I have the honor to enclose a note on the draft Bill framed by the Rent Law Commissioners. It contains my personal opinion on the different questions raised. Of the classes interested in land, I have been unable to arrive at the views of the ryots. It is a difficult and delicate task to elicit opinions from cultivators on a subject so remote from their general sphere of thought as a proposal to change an important law. This can, I believe, only be done in the course of familiar intercourse, or after friendly relations have been formed, and I have not as yet had much opportunity in this district for ascertaining what the ryots really think on the

subject. The reports of the sub-divisional officers give no information on this important point. I may perhaps be permitted to state that the ryots of Pubna and the neighbouring districts prefer the present system of enhancement by mutual consent or civil court suit, to any proceedings of the nature of a settlement through the Collector. This I clearly ascertained at the time of the introduction of the Agrarian Disturbance Bill. To that part of the draft, intelligent ryots would, I believe, everywhere take exception, while they would approve of the changes in the direction of tenant-right.

2. With regard to the views of the rent-receiving classes, I notice an important difference between the opinion prevailing here and that which is generally expressed by landlords in Bengal. In the Lower Provinces all proprietors and tenureholders wish to see the present law changed. They desire two things—the limitation or destruction of occupancy or other ryots' rights, and increased facilities for enhancing rents, whether directly or under the cover of a law for the summary realization of rents, and they think it practicable to obtain these from the legislature. They may object to particular proposals, but they agree in considering that something should be done. In Shahabad, on the other hand, the landowners are content with the existing law, and deprecate all changes. They object to the provisions in Act X of 1859, acknowledging certain occupancy rights, but they have no hope of seeing these amended to their advantage, and think that any reform is likely to be injurious to them. The most they have to say in favour of the portions of the draft obviously in their favour is that they have no objection to them. On the other hand, they are entirely and strongly opposed to every concession to the ryots.

3. Another point of difference is that in Bengal zemindars, though they object to any measure limiting their control over the land, feel very slightly on the subject, as long as their security for existing rent and their prospect of enhancement are not diminished. What they want is a good and secure income. In Behar the proprietor desires something more. He wishes to be the master on his estate, with the practical power of preserving game, pressing labour, and exercising a general control over his tenants. He therefore resents any interference with the right to evict at will, which is the basis of all such power.

4. I have therefore to report that the attitude of the landowners towards the draft Bill as a whole is that of uncompromising hostility. This is only what must have been expected. It was never supposed that there was any need for change in Behar in the direction of giving increased powers to the proprietors, and all proposals have been in the opposite direction.

5. I forward a copy of a letter from Messrs. Burrows, Thomson and Mylne, in which they state certain objections to the abolition of distraint. No part of the draft has been so strongly objected to as this by the landowners, with whom I have conversed on the subject.

6. Mr. Faulder, the Sub-divisional Officer, held a meeting of landholders at Sasseram at which strong objections were expressed to giving the modified rights contained in Chapter IV of the draft to ryots who have been three years in possession, and to granting full occupancy rights in Behar to resident ryots who have been in possession for the same period. It was stated at the meeting that no landlord would, if the draft became law, let any tenant remain in his village long enough to become a permanent resident, that is, for twelve years. It was also alleged that land would be turned into *zerat*, and cultivated by hired labourers.

7. I append a memorandum of the proceedings of a meeting of landlords held by me at Arrah, for the purpose of ascertaining their opinions. They were quite unanimous, and I have no doubt expressed the views of their class in this district very accurately. I would draw particular attention to the declaration that ryots' lands are now exchanged and the rent is varied, so that it may not be the same for twelve years, with the express object of preventing the growth of occupancy rights. It has often been asserted that such expedients are used, but I am not aware that any authentic proof of the fact has hitherto been advanced. A similar declaration was made at Mr. Faulder's meeting at Sasseram. A member of the Behar Rent Law Commission of 1878, who was present, cautioned the other landlords that this was an admission which might be used against them for controversial purposes, but the statement was not withdrawn or varied in consequence of this warning.

Note on the draft Bill framed by the Rent Law Commission.

1. As my opinion on the numerous points raised by this draft will have to be classified with many others, I think it most convenient to put what I have to say in the form of observations on the different sections of the Bill. I may, however, remark on the measure as a whole, that it seems to be the result of two movements. The first originated with the zemindars, who have for some years protested that legislation is necessary to enable them to realize existing rents, and also to enhance their rates. To this movement I think that no concession should be made. There is not, as far as I am aware, in Bengal, Behar, or Orissa, the slightest difficulty in realizing rents, provided the accounts have been properly kept. As a general rule, those who say they cannot collect their rents, mean that they cannot realize according to a jummabundi or rent-roll which they have concocted, but to which the ryots have not agreed. They are in the position of a tradesman, who has

prepared, or taken over from a predecessor, a book made up of imaginary debts, and have as much reason as he might have to grumble that there is a difficulty in realizing through the courts or otherwise. Real rents, that is, those to which the ryots have agreed, or which are customary, are everywhere paid with general punctuality, and in exceptional cases the landlord has every power and right for enforcing his demands, which has been trusted to proprietors in any civilized country, including the hypothecation of the crop. It seems to me equally unreasonable to alter the law with the object of facilitating enhancement, whether by making the trial of cases of this kind over to Revenue officers, or in any other way. In provinces temporarily settled Government and the public have an interest in the enhancement of rent, because rent is there the mother of revenue. But Bengal being permanently settled nothing is gained by enhancement. Every increase of rent is simply a transfer of property from the productive to the non-productive classes—from those who need it as a famine reserve to those who are raised above the fear of becoming a burden to the State in time of scarcity. Where under the existing law individuals have a right to enhancement, the courts are open to them. But it does not seem to me very wise to change the law with the express object of enabling them to get possession of any property in the land which, under the existing law, would remain with the actual cultivators.

2. The second of the two movements of which the draft is the result, is that in favour of tenant-right, and in this I altogether sympathise. I can conceive no object more worthy of a statesman than that of securing every ryot in this country in the possession of his holding; none which, if effected, would be more likely to benefit these provinces by fostering industry, promoting a spirit of independence, creating a reserve against famine, and rendering the masses contented. A third force has also been at work in giving to the draft its present shape, the desire to recast the law, for the purpose of making it better from the point of view of a draftsman. The subject matter is in this case so important, that I think changes which may lead to unforseen results should be avoided, where the only object is an improvement of form.

3. *Section* 1, *Local extent.*—The Commissioners avoid the question as to the law which should prevail in Orissa by leaving it to the discretion of the Lieutenant-Governor to extend the whole or any part of the Act to that province. It will, however, be necessary for the Government to come to a decision on the subject, and for my part I see no advantage in considering the matter in the executive rather than in the legislative department. The Legislative Council is appointed for Orissa as much as for Bengal and Behar, and it may be doubted whether it would be well advised in delegating to any other authority, what is practically the power of legislating at discretion in one of these provinces on the most important of all subjects. Part I of the Bill should, I think, be extended to Orissa. The present law of that province is Act X of 1859, which was not framed with special reference to the requirements of that part of the country. There is, therefore, no reason for holding that it should continue in force in Orissa longer than elsewhere. Improvements on the law of 1859 applicable to Bengal are all, I think, as applicable to Orissa. It might, however, be advantageous to introduce some special clauses for Orissa, as has been done for Behar. The custom which there prevails of an annual settlement after a rough measurement should, I think, be defined. Part II of the Bill would not, I think, work well in Orissa or elsewhere.

4. *Section* 3, *Definitions.* "*Holding.*"—I am not sure that it is necessary to define this word, but if it is to be defined, it should be used in the sense given by the definition. It is defined as an interest of a particular sort in land, and in the same section is used to denominate the land held itself. "*Rent.*"—The definition is so framed as to render the whole draft inapplicable to service-tenures. Service-tenures are numerous, the questions with regard to them urgent and difficult, and I do not see why they should be excluded from a Bill purporting to cover the whole area of the relations between landlord and tenant. This seems an important omission.

Explanation. "*Bastu.*"—Some persons whom I consulted as to the meaning of this explanation failed to see its drift, as I did myself at first. To make it clear, I think, the words "within the meaning of this section" should be inserted between "purposes" and "when." "*Tenant.*" With reference to the definition of rent, it is to be noticed that the holder of service-land is not a tenant within the meaning of the draft. "*Lease or pottah.*"—I would insert the words "or defining the terms of the tenancy." The ordinary pottah given to an occupancy ryot does not create the relation of landlord and tenant, which existed for years previously, or continue it, for it would continue were no deed executed; its object is to define the terms. The definition in the text seems connected with the theory so adverse to the interest of ryots, that their interest in their holdings is derived from their pottahs, whereas their right to pottahs is an incident of their interest.

5. *Section V. Division of Act.*—This seems superfluous. The divisions of an Act are best shown by the Table of Contents.

6. *Part I, Section VI, and following Sections.*—The proposed law as to undertenures seems excellent. The provision by which present occupancy-holdings of over 100 acres are converted into tenures, with a view to giving the ryots the power of acquiring rights of occupancy, appears to be a happy one. There should, however, be added a clause saving all existing customs and privileges. The gujashta holdings of this district, many of which exceed 100 acres, are exempt from all enhancement, and the statement to the contrary in Hunter's Gazetteer appears inaccurate. They would not therefore be affected injuriously by the

proposed change, being protected by section 7(1). But it is probable that there exist somewhere such holdings as those described by Hunter as the gujashta holdings of Shahabad, liable to enhancement, but only to enhancement in accordance with certain fixed customs. It would be unjust and foolish to confiscate the ancient privileges of such tenure-holders for the benefit of the superior landlord by making them pay at any higher rate, to which neighbouring gujastadars might be subject, but which is not applicable to them.

7. *Section* 12.—Between "unreclaimed land" and "were reclaimed" may be inserted "or such part of it as may appear reasonable." A settler in the Sunderbuns should not lose the benefit of this section, because he has only reclaimed three-fourths of his holding, if that was a proper proportion for him to clear. Still less should a tea-planter lose this privilege, because he reserved a part of the original jungle for firewood.

8. *Section* 19.—The change in the present law introduced by the words "as a tenant" and "paid rent for the same" appears objectionable. A right of occupancy is not derived from the payment of rent, but from continued possession and prescription under the custom of the country. In some cases the title is the stronger, because rent has not been paid. For instance, it is not uncommon to find a ryot settled upon waste land, such as the Sunderbuns, or the corresponding tract on the sea-coast of Orissa, who, finding no claimant to the rent, pays none. He creates a valuable property, and just before he can have acquired by prescription freehold rights to it, a claimant to the proprietorship of the estate starts up. The cultivator has been more than twelve years in possession, but has paid rent only for a part of that period, is he to have no right of occupancy? It is said he should have no rights because he is a "squatter." Squatter is an awkward word, but those who are known by it are often the pioneers of cultivation, and should not be treated as beyond the protection of the law.

9. Another practical difficulty would be introduced by the change. In some districts, as in Dinagepore, nearly all the ryots hold more land than they pay rent for. It might perhaps be held by the courts under this section that they have no right of occupancy in the excess. This would deprive large numbers of valuable property, to which they at present possess a legal title, derived possibly from their ancestors who reclaimed the land.

10. *Explanation* 4(*g*) *to the above section.*—With regard to the use of the word "khamar" as denoting a class of land in which occupancy rights cannot be acquired, I may draw attention to the inference drawn from this by Mr. Gibbon at page 301, volume II of the Report. It is certainly possible to argue from the insertion of the word that no right of occupancy accrues on bhaoli "lands," a conclusion which would be most prejudicial to a great part of the cultivators of this district. To avoid all chance of such a misconstruction, I think that the word "zerat" should be substituted for "khamar."

11. *Explanation* (*h*).—The question as to how far a landlord should be permitted to contract himself out of the obligations imposed upon him by law is now one of the first importance in Bengal. Formerly written leases were not numerous, and they were drawn up on a stereotyped plan, without special reference to such matters as occupancy rights. This is in some districts altogether changed, in others changing, and we must in future expect to see landlords take every legal precautions against the growth of adverse rights on their properties. In the case of trust land, it is a question whether it is not the duty of a trustee to provide against the development of occupancy rights, if he can do so, and whether he does not lay himself open to an action for any damages sustained by the estate if he neglects to take this precaution. The Court of Wards, I believe, provide against the growth of occupancy rights on estates where it was the custom of the former proprietor to do so. As to private trustees, I have known one refuse to lease for twelve years a few square yards of land to Government for a pond, lest Government should acquire rights of occupancy.

12. It may be said that in the immediate future it will be of little importance what laws we make as to tenant-right, if we permit perfect freedom of contract. The pressure of population on the land is now so great that at the time of taking a vacant holding the candidate will accept any terms. Zemindars have merely to insert in the leases granted clauses to the effect that such and such provisions of the law shall not apply to the tenancy, and as the would-be tenant must consent or make room for another, all the labours of the legislature are frustrated. The existing rights of occupancy must die out by degrees as tenures lapse for various reasons. Indeed, the rate of mortality among occupancy tenures is extraordinarily high, particularly in Eastern Bengal, and it is necessary that the gaps thus made in the ranks should be regularly filled up, or all will perish. If the zemindars are to retain the power of settling the lands which thus fall into their hands on such terms as they think fit, we must in the end come to this, that the whole of the soil of these provinces will be cultivated by tenants-at-will or for a term, paying a rack-rent A rack-rent in an overpopulated country is necessarily, according to the unchangeable rules of demand and supply, such a rent as leaves the cultivator a bare subsistence in average years, and necessitates State support if he is to live through a bad season.

13. I have great respect for freedom of contract, but where it must plainly lead to the ruin of the mass of the people, I think it should be restricted. In Bengal there is ample precedent for introducing some safeguards against its abuse. The old Regulations carefully provided that the zemindars should enter into no agreements contrary to their letter or spirit, and even went so far as to enact that the forms of leases to be granted by zemindars should invariably be approved by a Government official—the Collector. The theory that

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rent-rates and tenant-right may safely be left to be settled by the parties concerned, that is, to the competition of a crowd of pauper ryots, who will offer anything to get the chance of a livelihood, is of recent origin.

14. I should therefore provide that contracts by which a tenant is debarred directly or indirectly from acquiring a right of occupancy shall be null and void. This rule would be subject to the general exceptions to the acquisition of occupancy rights, and possibly it might be well to introduce some others. For instance, holdings of the annual rent of Rs. 200 and over might be specially dealt with. It is, however, to be remembered that all the land really the absolute property of the landlord is free of tenant-right, as *sir*, and the land with which he is not allowed to deal exactly as he wishes is village land, the right of letting which has passed to him by law, and subject to legal restrictions for the benefit of the country at large.

15. *Section* 20.—The provisions as to the transferability of occupancy rights appear to be excellent.

16. In clause (*c*) after the word "stipulation" I would insert "as to subletting." To give the landlord the power of dictating at the time of granting the lease a number of conditions, for a breach of any one of which the tenant may be ejected, is inconsistent with the establishment of rights of occupancy, or the maintenance of any supervision over contracts for the cultivation of land.

17. *Section* 22.—The provisions of Act X of 1859, that ryots having rights of occupancy are entitled to hold at fair and equitable rates, and that the old rates shall be deemed fair and equitable until the contrary be proved (section 5), are omitted in the draft. This appears to me most objectionable. The law which throws the *onus probandi* on the party seeking to change established rates is very useful and should on no account be abolished. Moreover, the general provision, that rates shall be fair and equitable, vague as it is, has prevented much injustice, as it has always been used to temper the strict application of general rules to cases in which they would otherwise have caused individual hardship. Such a clause would be more necessary under the draft, as the rules it lays down being more sharp and precise stand in greater need of such a safeguard.

18. Section 22 of the draft is to be substituted for section 17 of Act X of 1859,* and in comparing the two I think the present law preferable in many respects. In the first place the draft declares that the landlord is entitled to enhance on certain grounds, while the existing law only goes so far as to say that he cannot enhance on any other grounds. The two modes of expression are not identical. Cases may be suggested in which, though one of the grounds given exist, the landlord would not under the present law have a right to enhance, because to demand an increase would not be fair or equitable within the meaning of section 5.

Thus, it often happens that where value of the produce has increased, and therefore the second ground can be established, enhancement is denied, because the cost of production has increased as well. A ryot sued under the first clause of the section for enhancement to the prevailing rate, might at present reply that in his case such an increase would not be fair and equitable as he had reclaimed the land It is difficult to see how this or any other equitable defence could be sustained under the provisions of the draft.

19. In the first ground of enhancement the words "in the vicinity" have been substituted for "in places adjacent." Now the great difficulty of the courts on the first introduction of the Act was to determine what places should be considered adjacent for the purpose of the comparison, upon the result of which the rent to be paid by a ryot generally depends. In the North-Western Provinces it has been found necessary to make definite rules for the purpose of ascertaining this point, and in Bengal, the same result has to a certain extent been attained by the decisions of the courts of law which have had to interpret the phrase for sixty-eight years, viz. since the passing of Regulation V of 1812, which first conferred upon landlords the right to raise rent to the rate prevalent in "places adjacent." By substituting a new phrase for the old one the legislature would intimate its intention of effecting some change in the rule for selecting the area for comparison. But what change? what is the difference between lands "in the vicinity" and lands in "places adjacent"? And what lands are "in the vicinity" within the meaning of the draft? The only effect of the alteration would be to destroy the applicability of existing precedents, and to deprive the courts of all guidance on the most difficult subject connected with enhancement.

20. In the second clause only a single word has been altered, "shown" being substituted for "proved." "Proved" appears the better word, as indicating more clearly that the *onus probandi* lies on the landlord, and I see no reason to alter the old term.

21. I do not understand that the framers of the draft intended to alter the existing law as to enhancement on the second ground given in Act X of 1859. Their object is, as I apprehend, merely to insert in the body of the Act the effect of the decisions of the courts. But I think that the provisions of the draft would in fact effect a change, by rendering the rules derived from the precedents more rigid than they are at present, and depriving the courts of the power of adapting them to the circumstances of each case.

22. Thus Act X of 1859 provides that rent may be raised in the event of an increase in the value of the produce of land. This necessitates a comparison between the value of the produce at the time of the demand for the enhancement and at some previous

* NOTE.—Where Act X of 1859 has not been altered by Act VIII of 1869, the references in this memorandum are to the former.

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period. But at what previous period? The Act being silent on the point, the High Court in the case of Thakurani Dasi decided, or at least expressed an opinion, that the landlord could go back either to the date at which the tenancy was created, or to any other, at which, by reason of its continuance, its terms might be considered fair. The draft embodies this view, by saying that the comparison may be either with the rates at the time at which the rent was fixed, or with those prevalent at any subsequent period. In this I think it goes beyond the decisions, and the rule becomes unjust. The courts allow to plaintiffs, in enhancement suits, a reasonable latitude in selecting the time with which present prices are to be compared, but not absolute and unrestricted discretion. The selection must not be arbitrary. Take the case of a mehal with which you are well acquainted, that of Selimpore on the Wards' Estate of Sree Raj Chukur Sarun Narain Sing. There, I understand, the land was originally good, it was afterwards injured by deposits of sand, and is now slowly regaining its original fertility, the rent having remained the same throughout. If, when it has become of the same quality as at first, the proprietors were to sue for enhancement on the ground that its productive powers have increased by comparison with what they were at the time when the sand had done most damage, the claim would be inequitable, and would therefore be disallowed under the present law. I do not venture to say what the result would be under the draft, but the plaintiff would have a case. The arbitrary selection of the period of comparison is expressly allowed by the Act, and it cannot be contended that the causes which in this country steadily improve sandy-soil near great rivers are temporary or casual. The reliance of the defendant would be on the reluctance of the courts to interpret a statute in a sense contrary to natural equity.

23. Again, the law allows, as a ground of enhancement, an increase in the value of produce. The usual evidence of this is a rise in the rates at local markets, and such evidence is accepted by courts as sufficient, if there be no valid reasons for considering it to be, in the particular case in question, an unfair test. The draft substitutes as the criterion of enhancement the market rate for the value of the produce, the usual evidence for the thing to be proved. Now this will in general do neither good nor harm, as the two vary together. But cases will arise in which the prices of articles in the locality or in the usual markets do not correspond with the value of the produce on the land itself. In such cases the proposed change would work injustice.

24. *Explanation I.*—I fail to understand this explanation, and cannot conjecture who are the persons whom it is designed to exclude from the right to enhance rents as landlords. I do not see how any one could be a landlord within the meaning of the definition in section 3 of the Act, who did not either possess a permanent transferable interest in the land or "a farming or leasehold interest." There may exist, unknown to me, some tenures which are not transferable, and yet are not of the nature of farming or leasehold; but before saying that those who hold such tenures cannot enhance rents, I would like to know definitely what the tenures are.

Explanation II.—I find that many changes are introduced in the law for which no reason is assigned in the report or in the debates, and it is not always easy to guess their object or the grounds upon which their proposers would justify them. In this explanation there is contained an entirely new rule for enhancing the rent of pasture land, which seems to rest on no principle of justice or expediency. I can only conjecture that it is taken from some case properly decided with reference to the facts before the court, but which cannot be made a precedent for the assessment of all pasture land. The rule laid down that the rent of pasture land may be increased in proportion to the rise in the rent-rate of arable land, would be fair where the value of arable and pasture land happened, by a coincidence, to rise to the same extent but not elsewhere. It would be just only by an accident. The value of the pastures in the Kymore Hills may rise and fall at the same time and to the same extent as the value of the arable land in the valleys, but it is most unlikely that they would do so. In general the rule would be arbitrary and unjust. In some instances the value of pasture land would fall just when that of arable land rose, and in these cases the application of the rule would be a little absurd.

25. *Explanation III.*—This is a great alteration in the present law under which, as stated in Explanation I of the Digest, a rate payable by the majority of ryots in the places adjacent is a prevailing rate. The explanation makes a rate prevalent though no ryot may ever have paid it. The subject, however, must be treated under another heading.

26. *Section 23. Amount of enhancement.*—There seems to be some inconsistency between clauses (*a*) and (*b*) of this section. By clause (*a*), if a spontaneous increase has taken place in the value of the produce, "the landlord shall be entitled to one-half of such benefit only." By clause (*b*) the increase in the rent cannot be more than proportionate to the increase in the value of the produce. What then becomes of the landlord's title to half the benefit? It is a title which will seldom be enforced. To take a common case, a holding originally paid a rental of Rs. 4, the value of the produce being Rs. 40. A rise of 25 per cent. having taken place in prices, while the cost of cultivation remained the same, the annual produce is valued at Rs. 50, there being thus a net increment of Rs. 10. The landlord under clause (*a*) is declared entitled to half this benefit, viz. Rs. 5, but under clause (*b*) he can obtain only 25 per cent. increase on the rent, viz. Re. 1.

27. This ambiguity may be prevented by inserting in clause (*a*) the words "subject to the provisions in clause (*b*)." The effect of the section would then be to introduce three new limits to enhancement in addition to the established rate of proportion. I cannot say that I know of any cases in which any of the rules would apply, as the rent obtainable

under the rule of proportion would always, in my opinion, be less than that to which it would be restricted by these new limitations. But in the future these new provisions may do good.

28. I think that in the discussions which have for some years been carried on as to the law of enhancement, including those contained in these volumes, too much stress has generally been laid on the second ground of enhancement given in section 17 of Act X of 1859, and too little stress on the first ground. Zemindars generally sue for enhancement on all three grounds together, but the real battle is fought as to prevailing rates. The second ground is much talked of in debates, but little relied upon in the law courts, the fact being that few landlords have anything to get under it. For although prices have greatly increased of late, rents have risen more than in proportion, and there is really no case for further enhancement on this ground. The right which it gives to zemindars is novel, and was conferred upon them by an amendment introduced in the original Bill at a late stage, when the Legislative Council was assembled at Simla in 1859. It may have done mischief at first, but it is now of little practical importance, and I think it may be allowed to remain in its present form.

29. Legislation as to enhancement almost invariably turns on the first ground, that the rent paid is below that prevalent in places adjacent, and in this respect it presents considerable difficulties. The manner is which this ground of enhancement should be worked has never been thoroughly ascertained, as was the procedure on the second ground in the Thakurani case. The procedure practically adopted by litigants in some of the lower courts is certainly open to great objection. Individual ryots are induced, by promises which are not to be disclosed, to make collusive agreements to pay at certain rates or to suffer decrees to go against them at such rates, and then these transactions are brought forward as proving a prevalent rate. It is uncertain to this day whether a rate paid by no one may not be held to be prevalent, because it is the average of many rates, and the working of this rule, under which each decree, by bringing a lower rate up to an average, thus creates a new average, to which rates may immediately be raised, gives no finality until the highest original rate has become prevalent. Moreover, there is no rule to guide the court in determining what places are adjacent within the meaning of the section.

30. I think that these difficulties would be met by adding to the first ground of enhancement the following explanations, which would not be inconsistent with the text:—

Explanation I.—No rate of rent shall be held to be a prevailing rate unless it regulates the rent of the majority of the ryots of the class in question in the places adjacent.

Explanation II.—The "places adjacent" must form a known division of the country, as a mouza, dehi or pergunnah, and the land of which the rent is to be enhanced must be situated in such division. To make the matter still clearer the words "if any such there be" might be added after the word "adjacent" in clause 1 of section 17. The effect of these explanations would be to limit the applicability of this rule of enhancement to cases in which there is a customary rate, paid by the majority of the ryots of a known revenue division of the country. These cases are not, I believe, very numerous, and therefore enhancement cases would be few. Indeed, the time for enhancement on this ground has passed away. Since 1794 (Regulation IV), zemindars have had the right of enhancing the rent of privileged individuals to the pergunnah rate, and since 1812 (Regulation V) of enhancing to the prevailing rate in places adjacent. In the course of three quarters of a century the prevailing rate, where any binding rate existed, has been enforced against those who had at first escaped it. The clause is now only worked so extensively, because in the absence of explanation it is so often interpreted to introduce the average of many rates as the ever changing criterion of a proper rent. The object of the rule was to enforce established custom against individuals. It is now used to break down customary and prevalent rates by raising them till they approximate to exceptionally high rates paid by a few individuals.

31. *Chapter IV. Compensation for disturbance.*—If we would prevent the land of Bengal from becoming by degrees subject to a competition rent, which in an overpopulated agricultural country must always, under the natural law explained by political economy, be the same as a starvation rent, it is necessary to do three things. The first is to regulate the rents of occupancy ryots; the second to provide that all permanent ryots shall acquire occupancy rights, any contract to the contrary notwithstanding; and the third to make it the interest of landlords to let ryots become permanent. If contracts to bar the acquisition of occupancy rights are declared void, landlords will evict their tenants before they have been 12 years in possession, unless they are discouraged by some regulation from so doing. I therefore regard a system of compensation for disturbance as a necessary pendent to a law conferring occupancy rights after 12 years' residence.

32. *Section* 26.—I do not, however, regard the procedure prescribed in Chapter IV as well adapted to secure the end in view. There seems no reason for distinguishing between a tenant who has been three years in occupation, and one who has been in possession for a shorter period. It is said that the former has shown an intention to remain permanently. But surely the desire to abide is proved by the very necessity for eviction. If the ryot wished to leave there would be no reason for turning him out. It is possible that a rigorous adherence to this proposed rule of three years would lead to a system of eviction before that period had elapsed. Whatever right is given as to compensation for disturbance, should be conceded to all ryots irrespective of the term for which they have held, provided only they be resident.

33. It is of little use to provide a means by which ryots might obtain compensation for disturbance in the case of ejectment if the means be such that the ryots will not use them. As a matter of practice, I believe that Chapter IV would remain a dead letter. The ryots have a strong and well grounded belief that it is their best policy to have as little as possible to do with legal forms, and to act solely on the defensive. On receiving a notice of enhancement under section 24, the ryot would never file a deed of relinquishment under section 27. He would simply refuse to pay and wait to be sued. The right to compensation being made dependent on his filing the motion of relinquishment, he would never get anything by it. The proposed scheme would be suited to its purpose if the object was to make a plan which would look well on paper, without practically interfering with the zemindar's present power to eject non-occupancy ryots at discretion. But if we want a system of compensation to work, we must provide that any ryot disturbed in his possession shall be entitled to such compensation, a provision being made that ejection for non-payment of rent shall not be considered disturbance. By rent is of course to be understood the sum the ryot has agreed to pay, not any larger amount which the zemindar may demand.

34. The amount of compensation should be proportionate to the loss sustained by the tenant in consequence of disturbance. One year's rent may be sufficient on large farms, but it is altogether inadequate on the small holdings of ordinary ryots. I should fix the compensation in the case of ryots paying less than Rs. 50 a year at actual damages not in excess of seven years' rent.

35. I am very glad to see that the Commissioners have provided in the draft for granting compensation for improvements. It is now generally acknowledged that some legal protection in this respect gives great encouragement to good husbandry. I do not, however, see why, contrary to the English law, the right of compensation should be denied to the tenant evicted before he has been three years in possession, and who, one would have thought, would be entitled to peculiar consideration as being turned out of the land which he was improving before he had time to reap any of the fruits of his industry. Neither do I understand why such compensation should be denied on sir, nijjote, or any other kind of land. In England all land is what we would here call sir or nijjote, and yet compensation has always been the custom, and is now the statute law.

36. *Section* 30.—The first sentence of this section appears superfluous. It needs no Act to tell us that landlord and tenant may agree as to the amount and mode of compensation if they be so minded. Clause (*a*) of the section is taken from the English Agricultural Holdings Act, section 7, but transposed by itself it loses its meaning. In the English Act, the proportionate part to be deducted is a part proportionate to the scale laid down in section 6 of the same statute In the draft it is also prescribed that a proportionate part shall be deducted, but the scale not being given, the words apart from their proper context bear no significance whatever. Clause (*b*) of the section in the draft would be difficult to work in India, where works are seldom kept "in good repair or condition," and clause (*c*) has here little application, as we have not a complicated system of farming, any deviation from which may be considered to cause deterioration.

37. I think we should only puzzle the moonsifs' courts by giving to them for guidance in assessing compensation scraps of English law, without the context, or the local reliance which might render these intelligible. The fundamental principle is that the tenant when ejected should receive the value borne at the time by the improvements he leaves behind him. It would, I think, be best to leave the civil courts for the present to assess this value on the evidence in each case. We have not the experience necessary for framing really useful rules, and in its absence we had best make none.

38. The provision that there shall be no appeal against a decree for less than Rs. 50 compensation is a direct temptation to moonsifs to underestimate the value of improvements in order to avoid the troubles of appeal. It is, moreover, one-sided in another way, there being no appeal for the tenant if large claims are rejected, but an appeal for the landlord if they be decreed. For "awarded" the word "claimed" should be substituted.

38. *Chapter V.*—I doubt if any separate rules are necessary for ryots who have held land for less than three years. The privileges given to ryots who have held for three years should be made general.

40. *Chapter VI. Land used for building purposes, section* 36 —The motive of the zemindars in objecting to agricultural land being used for building purposes is simply to prevent the occupier from acquiring rights which the courts generally attach to the erection of permanent buildings. Proprietors object not to houses in general, but only to the erection of pucka houses. They have similar objections to planting trees, digging wells, and all improvements, which are generally prohibited in the leases granted. In the interest of the country this feeling should be discouraged. Section 36 deprives even a ryot at a rent fixed for ever, the real owner of the soil, from using his land for building purposes. This seems most unfair and impolitic. I would leave all occupancy ryots to do what they please with their lands, subject to a civil action if they so damage the holding as to endanger the landlord's security for his rent.

41. I do not think that rights of occupancy should be allowed in building or other non-agricultural land, as there is neither the old custom nor the economic necessity which justify the establishment of such a rule as to ryots' holdings. Under the law as drafted every tenant of a house in Calcutta who has a lease of which twelve years are unexpired when the Act is passed, will, at the termination of that period, have acquired a right of occupancy

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of his compound. This seems not only unfair but a little ludicrous. If Calcutta and the suburbs are excepted,* the injustice will still continue in the rest of Bengal.

* In the draft they are not.

42. *Chapter VII.*—The proposal as to merger seems to come to this, that we are to introduce in the interior of Bengal a very technical rule of Norman English law, which was never so domesticated in England as to acquire an English name; which was never applied in its integrity, as it was always qualified by equity; and which is now discredited and nearly abolished. This rule is in Bengal to be qualified by the power of the person against whom it is directed, to prevent its operation by going through a particular form, but in no other way. Such hard-and-fast rules and such forms to charm them away, are dear to the hearts of lawyers, but are generally enforced at the expense of laymen. No inconvenience has been felt from the present state of the law. The case quoted by Mr. Field at page 394, shows a defect not in the law of merger, but in that of registration, our system in that department not being as yet sufficiently perfect to enable any one to ascertain readily the encumbrances against an estate he wishes to purchase. I regard this Chapter as altogether out of place in a law as to the relations of landlord and tenant, and think that it might with advantage be expunged.

43. *Chapter VIII.*—In providing for the registration of transfers and succession of tenures in the rent office of the landlord, the draft assumes (1) that there is a rent office on every estate and farm, and (2) that it is conducted on such business principles as to be a proper place for registrations. As applied to the country at large both assumptions appear to be unfounded. It is a matter of surprise that the draft does not even provide for the contingency of there being several rent offices for the same holding, as is the case in a considerable proportion of the land of Bengal. Is the ryot to register his succession in each of the shareholder's offices? Again, upon many small estates there is no office. A gomashta collects the rent, and sends it to the shareholders, some of whom are absent on service, others inaccessible to those who come on business. The gomashta is a poor and ignorant man, receiving Rs. 2 a month, with no means of registering anything, unless by an illegible scrawl, perhaps on a palm-leaf.

44. Where there is an office it is seldom a fit place for registration. Chicanery in matters of account is traditional among rent collectors in Bengal. A ryot coming to a rent office to get his succession registered would, in perhaps the majority of cases, be subjected to every kind of trickery and extortion before he could get his business done. In many instances his fee would be taken and there would be no registration after all.

45. The remedy for non-registration provided by section 51 would work very oppressively. If it is intended that the landlord is to bring a suit for attachment, he might as well be left to sue for an order for registration at once. But I believe that the true sense and meaning of the section is that three months after the death of a ryot, a landlord may, of his own authority, and through his own agents, forcibly eject from house and holding the heirs of the deceased, if they have not previously registered their succession at what may be a non-existent or an inaccessible rent office. Such a proceeding would assuredly be misunderstood, and not unfrequently lead to a riot. The power to adopt it would place in the hands of landlords a new weapon for offence. By preventing registration for three months they would acquire at least a colourable pretext for offering a ryot the most serious insult and injury in his own house by ejecting him with his family and property, or so much of the latter as the *lathials* do not break or steal. Indeed, I have seldom heard of a proposal which would give to a landlord greater opportunities for that mixture of force and fraud, that net of legal procedure and illegal violence, so closely woven together that they cannot be disentangled, in which too many of the zemindars in some districts of Bengal still delight.

46. I therefore disapprove of Chapter VIII. Successions to occupancy holdings I would leave unregistered, as we have no agency at once honest enough and cheap enough to register them without causing greater evils than those we wish to cure. Transfers of holdings and tenures might be declared liable to registration within a year at the public Registration Office.

47. *Chapter IX.*—I believe that the allegation as to landlords exacting rent at inconvenient seasons are without any substantial grounds. In the grievances which ryots have brought before me freely this was never one. I would not interfere in the matter. The first of the months of Asin, Poos, Chyet, and Jaisto are, I hear, the most convenient seasons for payment in Shahabad, and the demand may be distributed by assigning five annas to the two first kists, three annas to each of the last. But this is a case in which any Government regulation would, I think, be purely meddlesome. Where rents are fixed by private agreement the parties know their own interests, which in this are identical, better than we can teach them; and when rents are fixed by a decree, as of enhancement, the court can distribute the demand without our making any hard-and-fast rule.

48. *Section* 57.—The most common complaint of Bengal ryots is that they are cheated in the accounts, generally in the form of entering the demand as greater than it really is, and crediting payments to arrears with a view to getting from the courts decrees for enhancement in the form of decrees for arrears. Thus, if a ryot's rent is Rs 5, and is paid regularly, he will be entered as paying Rs. 5 on account of a demand of Rs. 8, and after some time will be sued for the balance, with the effect of raising the rent by implication to Rs. 8. This is a form of falsification of accounts not confined to any one district, but which appears to be general in all parts of Bengal, Behar, and Orissa, and to be the main cause of litigation and disturbance in every district.

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The only check on the practice is to be found in the receipt, and, on estates where it is prevalent, receipts, though generally given, are not given in the form prescribed by Act X of 1859, viz. with a specification of the year on account of which the rent is acknowledged to be paid. Thus, in the case taken as an illustration above, the receipt would be for Rs. 5 paid on account of rent, but the year for which rent was paid would not be entered, lest the ryot should detect the fraud.

49. The counterfoil system cannot be regarded as a remedy for this crying and general evil. It is a check on the agent in the interest of his principal, and it may have other incidental advantages, but it can have no tendency to prevent the deliberate omission of a specification of the instalment for which the rent is paid. It cannot bind the zemindar to insert such particulars more strongly than Act X of 1859, section 10, bind him, and those who defy the old Act will not obey the new. Neither can the penalty provided by section 88 be regarded as adequate, because it has existed at least since 1859, and has not as yet produced any appreciable effect It is useless to say that the ryot may bring an action for actual damages not exceeding double the amount paid where a receipt in due form is denied. A receipt can always be obtained by means of a suit, but it does not pay any ryot to sue his landlord about such a comparatively small matter, and experience has proved that the ryot will not sue.

50. I venture to propose a simple and self-acting rule, which, if passed, would probably secure the regular insertion of the time for which the rent has been paid in every receipt. I have had an opportunity of consulting on the subject Mr. Quinn, Officiating Collector of Patna, Mr. MacDonnell, Officiating Collector of Sarun, and Mr. Finucane, late Settlement Officer of the Durbungah Raj, who authorize me to say that the suggestion seems to them valuable and free from objection. The proposed rule is that whenever a receipt is granted for money paid on account of rent, and the particulars required by law as to time are not inserted, the receipt shall be presumed to be an acquittance in full up to the date on which it may be given. Such a provision would, I confidently anticipate, put an end to the system of giving imperfect receipts. As to the direct refusal of receipts, that is no longer common, and the existing law on the subject seems sufficient. A landlord has generally in his own interest to see that receipts of some kind are given as a check on his agents.

51. *Sections* 58 *to* 61.—The present system of making deposits on account of rent receivable at the moonsiff's court seems to work well, and I see on reason to return to the old plan deliberately abandoned in 1869. Clause (*c*) of section 61 seems an improvement. I notice that while this work is taken away from the civil courts, that of apportioning rent by metes and bounds is given to them, though it seems more properly to belong to the Revenue Department.

52. Chapter X.—I think that there is a mistake as to the effect of disputes between sharers on the prosperity of ryots, and that the error is very prevalent. Magistrates see that these disputes give them a great deal of trouble, and too hastily assume that they must be mischievous to the country.

"The ryots are impoverished," we are told, "cultivation thrown back, and distrust and dissension pervade the village." There may be some truth in the allegation as to distrust and dissension, but the idea that the ryots are impoverished seems to me a very palpable error. I have watched closely the effect on ryots of disputes between co-sharers in the proprietary right, and always found that it was beneficial. It is the sole proprietor or the united family that enhances, ejects, and plays the tyrant. As soon as disputes between sharers break out the ryot's prosperity begins. It would be as reasonable to suppose that competition among buyers would ruin the sellers, as to believe that dissensions among landlords ruin their tenants. For each rival shareholder at once becomes a competitor for the ryot's favor, and the latter can secure his own terms. Take for instance, the estate known as the seven annas of Barabarzoo in the Serajgunj sub-division. It has been the scene of very bitter contention between rival claimants for fourteen years, and yet where will we find one where the ryots are more prosperous, independent, and apparently happy? Certainly not in the adjoining estates, where the shareholders have united to enhance rent and destroy occupancy rights, and last of all, in one where a general manager has been appointed. I notice that Baboo Joy Prokash Lall, Manager of the Doomraon estate, states that "a dispute as regards the zemindary title is never prejudicial to the ryot's interest: it is sometimes advantageous to him." (The report, volume II, page 306). This is the opinion of a man who speaks of what he has observed, as he has seen it, from the zemindar's point of view.

53. It is indeed desirable, for other reasons, to provide for the appointment of a general manager on estates the proprietary right of which is divided among shareholders. The peace of a district may in some cases gain by the adoption of such a course, and also the family itself. I believe, however, that the remedy provided by this Chapter would prove worse than the disease. The existing law gives the Judge power to appoint a manager on the representation of the Collector or of one of the shareholders. The change proposed is that the Court of Wards should have power, if requested by the Judge, to take over the management. Estates under the Court are exempt from sale on account of arrears of revenue, and the Collectors possess extraordinary powers for the realization of rent, without resort to the courts even in certain disputed cases. The Court's management is therefore in many instances an advantage. To grant it is to offer a reward to co-sharers for disagreeing among themselves, and rendering the maladministration of their

property a matter of public concern. If the management of the Court in such cases became popular, a very large number of estates may be thrown on its hands, the co-sharers preferring to become rent chargers, and resigning to Government the active care of their property. This would be a most undesirable state of things, uniting most of the disadvantages of State ownership of landed property with those of private ownership.

54. I would therefore omit Chapter X, leaving the law as to co-parceners in its present state.

55. *Chapter XI, Section* 71.—Reading this section with section 74 it is evident that the word "proprietor" is here used in the sense of sole and unlimited owner. It is, however, differently defined in section 3. In clause (3) of this section, "landlord" is the proper word, not proprietor, as it is doubtless intended that a patnidar, who is not a proprietor, should give written authority for collections

56. *Section* 74 —The rule laid down by this section is one which has in every country to be limited in the interest of agriculture. It is injurious to the country that those who have only life interests in their estates,—a class which probably includes all Hindu owners of family property to whom sons have been born,—should not have the power to grant leases for a term longer than their own lives The prevalence of occupancy rights renders the difficulty somewhat less here than it would be in England, were there no statutes there in force giving special powers to those known as "limited owners." It is still, however, very great even here, and I think should be remedied. Under the Landed Property Improvement Act (23 and 24 Vic., section 25,) a limited owner may grant leases for 21 years, and the term is extended in the Irish Landlord Tenant Act of 1870 to 35 years. I should say that in this country a limited owner might be allowed to grant leases to actual cultivators for 30 years, and that Government should have the same power whenever it manages property either through the Court of Wards or otherwise. This power should also attach to civil courts when they manage attached estates.

57. *Section* 76 *(a)*.—I think this section unnecessary and objectionable. At present when a Collector makes a measurement by order of a civil court, he has to use the pergunnah pole, and discontent will be caused by changing to the Government chain, which is almost always smaller. I have measured with a pergunnah pole, and found the procedure both popular and convenient. It seems foolish to incur odium by using the Government standard when the results have to be converted into the local scale.

58. *Section* 77.—This section confiscates the right which landlords at present possess in certain places to half the value of trees cut down. With what object? Surely not to deprive the country of timber, fruit, and shade. If the object is to encourage future planting, it would be proper to add after the word "planted" the words "after the passing of this Act." I, however, doubt whether any case has been made out for interfering with the ancient custom of the country.

59. *Section* 79.—The whole of this section seems unnecessary Clause (8) appears very arbitrary and objectionable. In this country it is often matter of great doubt whether particular persons stand in the relation of landlord and tenant or not, and one of the strongest reasons for transferring the duty of hearing rent suits between such parties from the Revenue authorities to the civil courts, was that Collectors and Deputy Collectors in the opinion of the High Court made frequent mistakes on this point, which involved the question of jurisdiction. Ryots are liable to make the same mistakes as Collectors, and it is hard that for so doing they are to be punished by the supreme penalty of ejectment. The rule seems to me connected with the feudal origin of English land-tenures, a vassal committing a kind of treason by denying the right of his landlord. In Bengal it is neither just nor useful, indeed I believe it would cause much hardship and confusion. If a ryot fraudulently denies his zemindar's title on oath, or in any legal proceeding, he is liable to be prosecuted under the Penal Code; and I do not see why he should be subjected to any other penalty whatever. A landlord's interest in a holding is not forfeited because he denies his tenants' right, though the latter be subsequently established.

60. *Section* 80. *Ejected ryot entitled to the away-going crop.*—This rule is very fair and necessary. It seems contrary to all equity that a landlord on ejecting should take the standing crop, and I see it was ruled the other day by the High Court that under the present law he could do so.

61. *Chapter XII, sections* 81 *and* 82.—These sections introduce an excellent rule, which will do more good in Behar than any legislation of recent years. In this division I understand that the civil courts, before recognising a right of occupancy, require very strict proof that the ryot has held the same land for twelve years. This is entirely opposed to tradition and custom, which acknowledge the right of the hereditary and resident ryot in any land which he may hold, it being the usage frequently to exchange lands among ryots of this class for the convenience of the parties. Mr. Faulder, Sub-divisional Officer of Sasseram, reports that when the proposal contained in this section was explained to a meeting of landlords, they objected that if it were enacted no landlord would permit a tenant to remain twelve years in his village. Mr. Faulder adds that certain landlords in Behar "openly declare that they do change their ryots about from plot to plot at short intervals with the very object of preventing their acquiring occupancy rights." There seems no reason for limiting the operation of the rule to ryots in possession on a particular date. It might be made general and prospective like the twelve years' right in Bengal.

62. Such artifices to defeat the law would be stopped were compensation for disturbance given in all cases of ejectment.

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Section 83.—I would omit the last clause of this section. There seems to be no reason for declaring that the proportion of a crop to be paid as rent shall be one-half in cases where it is now fixed by custom at a less amount, if there is no written agreement. Why should an unwritten custom be altered to the detriment of the ryot?

63. *Section* 84.—After the words "civil court" insert the words "within one month."

64. *Section* 85.—Add at the end "or Deputy Collector of the sub-division." The Collector's office is often too remote for filing the appraisement papers.

65. *Section* 86.—After the word "advantages," I would add "in places adjacent, or in the nearest places where money rates prevail," and cancel the rest of the section. It is acknowledged that the proper standard for the conversion of grain-rents into money-rents is to be found in the money-rents paid in the vicinity, if there are any. It seems to follow that, failing such, the money rents of the nearest lands of similar value would be the second best standard. Such lands can always be found within a few miles. The average value of the landlord's share of the produce is not a good standard, as, with such allowances as our officers make, it would still be a rack-rent, leaving the ryot to starve in years of scarcity. The practice of the courts might be altered, but it would always be arbitrary. There really exists no standard for the conversion of grain into money-rents other than the example of the money-rents in the neighbourhood, and the different courts if left to themselves would adapt no uniform or consistent courses.

66. *Chapter XIII.*—The provisions as to limitation appear unobjectionable.

67. *Chapter XV. Procedure in enhancement cases.*—Jurisdiction in rent cases was in 1869 transferred from the revenue to the civil courts, in consequence of representations from the High Court that the work was not properly done by executive officers. Since the change has been effected, the unpopularity of our Landlord and Tenant Code, and particularly of the part of it which relates to enhancement, has much diminished, if it has not altogether disappeared. The ryots have found that they obtain justice in the civil courts. I should regard any reversion to the old system of procedure as retrograde and impolitic. It is true that moonsiffs have not great experience of land valuation, but they have as much as most Deputy Collectors, whose employment as excise and treasury officers, or as Magistrates, gives them no insight into matters agrarian. In most districts there is but one Deputy Collector with any pretence to experience in the assessment of rent, and he is frequently a man of the old school, ignorant of English, and therefore incapable of following the precedents published in that language. The moonsiffs have now had eleven years experience of rent cases, and they are assisted by the civil court amins, who are beyond all comparison better than the revenue amins. As appellate authorities, I think that the High Court and the Sessions Judges are preferable to the Commissioners and to the Member of the Board of Revenue in charge of the Revenue Department—men who have been selected for the high appointments they hold for executive efficiency, without reference to their judicial ability or experience. Moreover, I think that the habit of mind produced by a revenue officer's work is not of the kind desirable in those who have to decide as to claims for enhancement. Deputy Collectors have continually to enforce the claims of Government against individuals in settlement work, in the assessment of license-tax, and in general business. I do not say that the bias they thus acquire is out of place where only one party is represented, and the vigilance of the presiding officer is required on behalf of the other, but I think that, in enhancement cases, it leads to a leaning towards the zemindar's interests. I have never known such bad enhancement decisions passed by moonsiffs as some of those of revenue officers before 1869, and my experience of Orissa, where the old system is preserved, is not favourable.

68. The only modifications which the present procedure of enhancement seems to need are in the form of notice of enhancement and in the suits for kabulyats. The object of giving a notice is to inform the ryot of the precise ground for the demand for enhancement. The zemindars have generally attempted to defeat this object, and to give no information whatever in their notices. The notices which I have seen, or which I have come across in the published cases, are generally somewhat to this effect, that whereas you at present pay Rs. 4 rent, you are now required to pay Rs. 12 on the following grounds: (1) that your rent is below the prevailing rate; (2) that your land has improved in value; and (3) that you hold more land than you pay rent for. It is obvious that a ryot can learn nothing as to the real reason for the enhancement from a document of this sort, which merely repeats all the possible reasons. In this matter landlords very generally overreach themselves, and a large proportion of enhancement cases are dismissed because the notice is vague. There is, moreover, great difficulty in proving the service of notices, the receipt being generally denied, and often with perfect truth.

69. To secure precision some rules should be framed for the guidance of those who have to draft the notices, and I beg to suggest the following:—

(1) A notice may include claims under clauses 1 and 3, or 2 and 3 of section 17, Act X of 1859, but not under clauses 1 and 2. This is in accordance with the High Court decisions on the subject, and with common sense. A zemindar may take as the standard of assessment either custom (clause 1) or the economic principal introduced in clause 2, but not both together.

(2) Notices under clause 1 must specify the present rent, the prevailing rate, the class of ryots, the description of land, and the places adjacent to which reference is made.

(3) Notices under clause 2 must specify the present rent, the value of the crop at the time with which comparison is made, and the present value.

(4) Notices under clause 3 must specify the quantity of land for which the ryot pays rent, the quantity of land held by him, and the date at which the measurement was made.

(5) All notices must specify the amount of rent demanded.

Specimens of notices including one and two heads of demand might be given in an appendix.

70. The difficulty as to the service of the notice would be got over if it took the form of a summons to the tenant to appear before a tribunal on a specified day to admit or deny the claim. In the case of contumacy, attendance would be secured in the usual way. The ryot's consent, if given, would be duly entered in a register, which would serve the purpose of a record of enhancement.

71. This leads to a connected subject, that of the registration of enhancements. At present every lease for more than one year must be registered, but the rent-rate of a whole estate, perhaps including the greater part of a district, may be raised without any record whatever. This is an obvious defect in the present law, and it has lead to very extensive abuses. I have been struck, in the course of my service in the different districts in Bengal, Behar, and Orissa by the uniformity of the disputes which everywhere more or less prevail between landlords and tenants. They all turn on the question whether the ryots did or did not consent to a demand for enhancement said to have been made otherwise than by legal notice. In all the evidence is of the same type—on the one side are produced the zemindary accounts, showing, if they are trusted, that the ryots have in fact given their consent by paying at the enhanced rate, on the other, are put forward verbal denials and criticisms of the accounts. In some cases the accounts have been proved to have been elaborate forgeries. The suggestion which I have made as to receipts in paragraph 50 will partly meet this difficulty. With the same object I would introduce the principle of the North-Western Provinces Act, that a rent-rate once fixed by written agreement, or by public authority, or once recorded in the Road Cess returns, shall not be enhanced otherwise than after the consent of the ryot has been recorded to the notice in the manner indicated in the last paragraph. The Act of the North-Western Provinces permits of alterations also by a registered deed, and to this there is no great objection. All collections in excess of such rent-rate should be treated as exactions within the meaning of section 10, Act X of 1859.

72. *Section* 95.—This section gives the landlord the right to choose his own court, the revenue or the civil, whichever in the particular district is found most ready to grant enhancements. I think such concurrent jurisdiction objectionable on many grounds besides that previously stated, that the revenue courts have been proved on actual trial to enhancement cases very badly. Government will have to be prepared to supply officers of either class, and, as Mr. Dampier has shown in his note, this may prove most inconvenient. There will be a continual conflict of decisions between the two classes of courts, which may assess very different rent-rates on similar lands in the same neighbourhood. It is acknowledged that landlords have no right to this privilege,* and on this ground it is refused to a certain class. Then why grant it to any class? It is certainly within the power of Government to grant privileges, but this particular privilege is that of taking more money from the ryots than the present law authorizes. That is not a privilege which Government should confer.

73. With regard to the proposed abolition of the notice of enhancement, I have to remark that such a notice is not absolutely required under the present law. It is always open to the zemindars to proceed by a suit for a kabulyat at enhanced rates under section 23, clause 1 of Act X of 1859 (*vide* several cases quoted under this clause in Chapman's edition of the Act). This form of suit is very inconvenient, and should, I think, be abolished. I would, however, prefer the procedure which I have indicated, by notice to appear in court, to that by suit after a plaint, such as that proposed. The costs of the notice where the ryot agreed to the enhancement would fall on the zemindar, that of the suit, in the same case, on the ryot. There seems to be no reason why the tenant should pay the cost of raising his rent unless he resists the demand. In contested cases the necessity of first serving a notice gives time for compromise, and prevents rash and ill-considered actions on either side. The enhancement of the rent of an occupancy tenure is a serious matter, and one of rare occurrence. We should not attempt to make the procedure summary. As to the objection, that so many suits are dismissed for technical irregularities in the notice, I have to remark that the irregularities which have been found in certain cases were not technical but deliberate attempts to deprive the tenants of the information which the notice should contain, and that similar defects in the plaint will lead to the same result under the proposed system.

74. *Sections* 99 *to* 106. *Procedure before Collector.*—No procedure is prescribed for the guidance of the Collector in ascertaining a table of rates, and no rules are laid down. It would appear that he is not bound to record such evidence as may be offered by the parties or to hear counsel. It it presumed that his proceedings will be inquisitional in form, not judicial, that he will make his own estimate of the rise in prices, or other ground of enhancement, and fix the rates accordingly. Similarly, the Commissioners and Board may alter the rates at discretion without taking evidence.

75. It will hardly be denied that this change deprives the occupancy ryots of a right which they now possess under section 5 of Act X of 1859, viz. to hold their land at their

* The change is called "an increased facility for enhancement." (Paragraph 68 of the Report) To the ryot this is the same as an increased liability to enhancement.

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present rate of rent until some ground of enhancement has been established by legal evidence before a judicial tribunal. As the law puts it, the old rent should be deemed fair and equitable until the contrary be proved under the provisions of the Act. Neither will it be denied that this is a valuable right. In these cases, as has often been remarked, everything depends upon the scale into which we cast the burden of proof. If we were able to estimate in money the actual value of this separate right of the occupancy ryots, to hold at their present rates until a ground for enhancement has been made out on a judicial proceeding, it would probably in the whole of this province be equal to many millions sterling. Why deprive them of so valuable a property? Why put an end to a presumption so reasonable in itself, so conservative in its action, and worth so much to those in whose favour it is made?

76. The objects of the legislature in agrarian legislation should be to protect existing rights, and to open the way for future improvements by rendering the position of the actual cultivators as secure as possible. It is not always possible to reconcile these two distinct objects, but we should assuredly reject any proposal which frustrates both. The draft would deprive the ryots of their right to hold at existing rates until these have been proved inequitable before a judicial tribunal, and therefore is an infringement on the principle of property. It would render their position in the matter of fixity of rent less secure, by substituting executive discretion for judicial decisions. This is not merely a question of jurisdiction between the revenue and civil tribunals. The proposal is to deprive the ryots of the protection of all tribunals whatever, leaving the rent rates to the arbitration of the executive Government and of its subordinate agents, who cannot be compelled by any legal process to respect such rules as the legislature may frame for them. A tenure liable to enhancement at executive discretion is of a much lower character than one which is protected by the judicial courts. The proposed change would, I believe, degrade occupancy rights and thereby retard improvement in agriculture.

77. *Sections* 112 *to* 114.—These sections, which effect no substantial change in the existing law, do not seem open to objection, except that, to prevent conflict of jurisdiction it would be well to provide, as in Act VIII of 1869, that the Collector's power of ascertaining and recording rates should be exercised only on reference from the civil tribunal.

78. *Section* 116.—Amicable compromises are certainly desirable, but I do not think that the public officer whose duty it is to give a legal decision should be instructed or allowed to effect them. To save the trouble of a regular proceeding, many Deputy Collectors will use pressure to compel compromises, which they can effect only by supporting the stronger side. The position of the Deputy Collector who has suggested terms of compromise, and tried to induce one party to accept them after the other has consented, will not be favourable to judicial impartiality. His tendency will be to make the recalcitrant party repent. There are in every district many persons quite as fit as Deputy Collectors for the purpose of effecting compromises, and if the parties wish they can find no difficulty in finding a proper arbitrators.

79. *Section* 122.—Price lists are at present published in the *Gazette* every week, and I fail to see the necessity for further action in this direction. These price lists may be received in evidence under section 35 of the Evidence Act.

80. *Section* 126.—It seems inequitable to charge ryots with the cost of settlement proceedings not held for their benefit, or at their request. This is particularly true in the case of ryots who were from the first willing to pay the enhanced rate demanded. Government does not charge the cost of settlement work to the ryots, and I fail to see why private persons should be permitted to do so. Occupancy tenures are not at present liable to the burden of such costs.

81. *Chapter XVI, Summary.*—The changes introduced by this Chapter in the present law are slight and unobjectionable.

82. *Chapter XVII, Section* 151.—With reference to clause (*b*) of this section, I would add a proviso that no occupancy ryot's rent shall be enhanced otherwise than after the notice prescribed by law. Otherwise enhancement suits might be brought under this section without regard either to the forms as to notices in the present law, or those as to the plaint in this draft.

83. *Chapter XVIII.*—In most countries, rent suits are simpler than other suits, and there can be little objection to a summary procedure in trying them. The amount of the yearly rent is seldom a matter of dispute, and the only defence to be anticipated is that of payment, which will easily be disposed of. I believe that the ready consent which many have given to the movement initiated by zemindars in favor of a summary rent procedure in India is due to a belief that agrarian litigation here is of the character with which we are familiar at home. This is a mistake. In Bengal, contested rent-suits are the most complicated of all suits. On well-managed estates either such suits are not brought, or they are decreed *ex parte*. The cases with which we have to deal arise on the badly-managed estates, and they are of a most troublesome character. The commonest, almost the universal, defence is that the demand for rent is greater than what is due. The landlord supports his plaint by the evidence of men of the lowest character for veracity, and by accounts kept by these men in the loosest fashion. The ryot replies that the witnesses are perjured and the accounts are forged. In many cases within my knowledge it has been clearly proved that the suits brought were supported by accounts fraudulently kept for years, with the intention of proving the rent to be higher than it was in reality, and these cases are typical. This is no where more true than in Behar, as will be seen by a reference to the Behar Commissioner's report at page 26v, Vol II.

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84. Such being the general character of rent-suits, I would leave them to be tried by the ordinary civil procedure to which the courts are accustomed. Short cuts to justice may answer in an open country, but in one so embarrassed by obstructions of every kind it is best to keep to the high road.

The draft on this subject is very complicated, not to say confused, as it includes references without end to the Code of Civil Procedure, instead of being complete within itself.

85. *Section* 173.—Under the Civil Procedure Code, section 154, courts have power to deal with cases at the first hearing if no injustice is likely to result. This discretion extends to rent-suits, and I think it sufficient. It seems unnecessary to give power to decide at the first hearing where such a course is not consistent with justice.

86. The money limit to appeals (section 220) may appear reasonable, but in practice no appeals will be preferred except where the issue is of real importance, though the nominal amount at stake is small. I have said that one of the most usual issues in a rent-suit is whether the accounts of a particular zemindari represent actual transactions or the result of a conspiracy to cheat with a view to enhancement, and this may be decided once and again in cases where the rent is less than ten rupees. Probably the estate will not contain a single ryot whose rent for any instalment is as much as ten rupees, so that under the draft the cause could never, except as a matter of favour, be brought before a Judge's court. Actual expreience has impressed upon me the necessity for allowing an appeal in such cases. Moonsiffs at outstations, living among the zemindars' servants, frequently fail to see how fraudulent the accounts are, and the real facts come out only in appeal.

87. *Section* 201.—I cannot but look on the proposal to compel the landlord in every case to execute his decree by selling the ryot's holding as a little wild. The effect will be to prevent zemindars, even when so disposed, from adopting milder means of securing their dues, such as the attachment of moveable property. They will have to oust the former tenants in every case of unliquidated arrears. The course of reasoning which induced the Commissioners to make this very original suggestion is given in section 129 of the report. "Realization of arrears of revenue or rent by the sale of the defaulter's interest is," we are told, "a principle now long established in the country, and understood by the people. That as a means it is successful we know from experience of its operation in the case of revenue-paying estates, putni talooks, and other tenures." I can imagine how the consideration of the facility with what Government revenue is now collected under the Sale Laws should prepossess some persons in favour of the system. But it is to be remembered at what a cost this system has been established. Almost all the old landed proprietors were sold out in a generation, and the land transferred to auction-purchasers, generally either Government servants or the agents of the ruined landlords The whole land of the country might have been confiscated, and given to new owners without a greater disturbance of the social system Is it contemplated that the new sale law should do for the ryots what the old sale law did for the zemindars of 1793?

88. Our experience of the effect of introducing a rigorous system of sale laws is this, that they ruin the actual holders of the tenures to which they are applied, substituting new men, who, with such a warning before their eyes, pay with punctuality. In their second stage, after the old proprietors have been ousted, sale laws work well on property of value, such as mehals and putnis. Perhaps when that stage was reached, such laws might work well on occupancy tenures also. But I presume it will hardly be considered advisable to take steps for the ejection of the present race of occupancy tenureholders in the hope of getting a better in its place. The political inconvenience of such a course would alone be sufficient to condemn it, independent of the amount of misery it would cause.

89. I would, therefore, omit Chapter XVI as unnecessary for tenures now saleable for arrears, and mischievous when applied to others.

90. *Distraint.*—The proposed Sale Law is offered as a substitute for the present right to distrain crops. The abolition of this latter right is objected to by zemindars,* both European and Native; no part of the draft is so unpopular among them. The ryots, on the other hand, do not, as far as I can gather, object to distaint. The form of agrarian crime, sometimes called the abuse of the right of distraint, has not, that I can see, any connection with that right. It consists in stationing peons to prevent the ryot from cutting his crop until he pays some demand, legal or illegal, or in carrying off his cattle for the same purpose. It will prevail whenever individuals are allowed to set themselves above the law, whatever the rule as to distraint may be, and it cannot exist under the present law in any district where the courts and the police do their duty. In Bengal the right of distraint does not lead to any abuse, and I believe the same may be said of Shahabad. The real abuse in parts of the Behar provinces is, or was, the failure to enforce the penalties provided by the Penal Code for criminal trespass, theft, and extortion, where these offences were committed by landlords with regard to the property of the tenants.

91. On the other hand, distraint may be a useful means of realizing rent from tenants who are likely to abscond. The safeguards provided by the present law seem to me ample, and if anything too severe. I would in one respect relax them by allowing the application under section 122, Act X of 1859, to be made within fifteen days of the distraint of harvest instead of five, as the period now prescribed hardly affords sufficient time for the journey to the court, and the necessary communication with superior servants of the State and with mukhtars.

92. *Section* 206.—I concur with Mr. O'Kinealy in his objection to the definition of encumbrances given in the draft.

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93. An abstract of the opinions which I have been favoured with on the subject of the Bill is given separately.

94. *Government letter No.* 2286½, *dated* 15*th July* 1880, *Paragraph* 5.—With reference to the proposal contained in Government letter No. 2286½, dated 15th July 1880, that occupancy rights should be conferred on all ryots who have cultivated their lands for three years, I have to remark that it is coupled with the suggestion to make the present occupancy ryots liable to pay according to a table of rates to be framed by the Collector. This is an obligation not at present imposed upon them. I should deprecate any attempt to create a dead level, by lowering the status of occupancy ryots while increasing their numbers. If there is to be any levelling in the case, it should, I submit, be a levelling up. The occupancy ryots would be in great danger if, at the time that they were deprived of the protection of the civil courts for their rent rates, they were confounded with a mass of tenants-at-will suddenly elevated to an equality with them. In practice I fear this would lead to very general enhancement. It is to be remembered that many of the occupancy ryots derive their privilege from long inheritance, and are by no means on an equality with those who have been but three years in possession. I, however, agree in thinking that there should be no separate class of ryots three years in possession. The privileges conferred on such should be made common to all tenants.

95. *Paragraphs* 6 *and* 7.—I see no objection to the declaration that the sub-tenants of mokurredars and istimrardars may have occupancy rights, as it seems in accordance with the present law, and I think that the same principle applies to the sub-tenants of occupancy tenants.

96. *Paragraph* 9 —The restrictions placed on the transferability of occupancy tenures seem to me necessary at first. It is desirable to take precaution against the general sale of such tenures for debts decreed, or on account of mortgages before the possessors have learned their value. After some years it would be desirable to make occupancy tenures alienable like guzushta tenures in Shahabad, or any other property in land.

97. *Paragraph* 20.—I regard the suggestion in this paragraph as an improvement on the procedure prescribed in the Act, but as still embodying a system inferior to that of the present law. It seems neither fair nor wise to subject occupancy tenures to enhancement on any ground other than those at present valid, either by framing tables of rates or otherwise.

P. Nolan,
Offg. Collector.

No. 2543, dated Behua, the 1st September 1880.

From—J. N. Watson, for Messrs. Burrows, Thomson, and Mylne,
To—P. Nolan, Esq., c.s., Collector of Shahabad, Arrah.

In reply to your No. 1028G, dated Arrah, 13th August 1880, in reference to the proposed rent law, the draft Bill of which accompanied your letter, we regret that so little time has been allowed to look over the very considerable mass of matter contained on the printed papers.

Clause 4 of the "Report" notifies that the *limited power "of distraint given by Act X of* 1859 *is not reproduced in the draft Bill"* because *we are afraid the provisions of "the present law are not always strictly attended to."* The admission is here made that the administration of the law and not the law itself is faulty.

As no other reasons seem to be given for the extreme measure of abolishing a law that has been tested by an experience of twenty years, we are obliged to say that we consider a grave injustice will be done to both ryots and zemindars if instead of the present simple and familiar process they shall be obliged to have recourse to the complicated and expensive alternative proposed in the "draft Bill."

As the experience of twenty years has proved the present law of distraint to be good in itself, it should be retained, and its proper administration provided for and guarded by severe penalties for illegal distraint.

(*a*) Section 20 of Chapter III of the draft Bill provides that arrears of rent shall be recoverable only by a decree of the civil court against the occupancy right or tenure. This will, doubtless, in a great measure prevent illegal distraint, but at a much greater expenditure of time and money to both ryots and zemindars than the present law involves. Another result will be considerable additional work thrown on the civil courts.

The "*proceedings*" for distraint proposed in the draft Bill are given in Chapter XVIII from section 166 and onwards. By this process, during the time a decree and its execution is obtained the ryot will be taught by designing and needy mooktears, that results and consequences are distant and doubtful, and he will only be too glad to listen to the specious advice. The costs meanwhile increasing in the shape of time misspent, attention distracted, as well as money outlay, and a sustained antagonism between himself and the zemindar encouraged.

In many or most cases the zemindar would be unable safely to satisfy the requirements of section 180 of this Chapter. Combination among the ryots would reduce if not neutralise the value of a decree against an occupancy right, and it is more than likely that collusion and intimidation would be resorted to by them to prevent any bid but that of the zemindars, who by the proposed law is bound to purchase, if no one else does. In such case, we know he could not maintain any other member of the village community on

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his new property, nor would an outsider be tolerated by them. The land would be left fallow or cultivated by the zemindar himself, who if not a planter and able to utilize the land for indigo, would have little chance of ever seeing a grain of the produce. The ultimate result would most likely be that the defaulting ryot or some of his relatives would cultivate the land as usual. It is true the right of occupancy would have ceased to exist *legally*, but under the circumstances what benefit is this to the zemindar. Section 81 of Chapter XII of the draft Bill would restore the occupancy right again after three years, either to the ryot or to some of his family.

The draft Bill in the matter of distraint seems to aim at the encouragement of misunderstanding and antagonism between zemindars and ryots, and to hand both over to the mookhtears of the civil courts for the purpose of spending time and money in the cultivation of these feelings. We believe a minimum of these deplorable results will be secured by a proper and careful administration of the present law.

Section 81 of Chapter XII takes from the zemindars, for no good reason given, a valuable property which it hands over as a free gift to men who, at best, are unknown and untried, and who, so far, can only be described as squatters. They may have been resident in the village and have cultivated a few bighas more or less effectively, but the fact of their being in the condition which this section proposes to remedy, is presumptive proof that they are not worthy of the gift which it is proposed to bestow upon them. A ryot who cultivates land steadily and well for twelve years has proved himself to be worthy of the benefits which rights of occupancy give, but we deny that as much can be said of the ryot who has done so for only three years; no law can transform the careless, improvident village loafer into a thrifty, intelligent, hardworking cultivator.

We have known many instances, especially among Brahmins and Rajpoots, when only one plough was kept for 20 to 30 bighas (12 to 18 acres). Of course only patches here and there of such land could be properly cultivated, but the result was a nominal and useless possession of the whole to the exclusion of better men, and the loss of improvement and enhanced value of the land consequent on proper cultivation.

The twelve years' law is a most wholesome one and fair alike to zemindars and ryots, and should not be abolished for merely sentimental reasons. If any change is made, it should be accompanied by such conditions as would secure the results intended. That is, justice to the land itself, from which the interests of the zemindars and ryots cannot be separated.

No zemindar working his own estate would care to part with or disturb a good cultivator. On the contrary, his interest is to extend such a ryot's holding as much as possible.

We return, herewith, the copy of the *Calcutta Gazette* of 21st July 1880, sent with your No. 1028G of 13th ultimo.

Memorandum of proceedings at a meeting of Landowners, held on the 30th October 1880, at Arrah.

Mr. Nolan, Officiating Collector of Shahabad, on taking the chair, explained that the object of the meeting was to elicit the opinion of the zemindars present on the draft Rent Law Bill. The subject would be discussed under certain heads, and the views expressed would be recorded for the information of Government.

The following questions were then put, and after discussion, the answers noted against them were given. The meeting was unanimous on every point. The Chairman and other officials present took part in the discussion, but not in the replies recorded, which are not to be taken as indicating their opinions.

Questions.	*Resolutions.*
(1). Is fresh legislation on the subject of the law of landlord and tenant necessary or expedient?	(1). The present law is satisfactory, and no change is needed.
(2). Is it expedient to convert occupancy holdings of 100 acres and more into tenures?	*(2). It is not expedient.
(3). Whether the principles of compensation for disturbance and compensation for improvements should be introduced with regard to ryots in possession for three years, as proposed?	(3). These principles should not be introduced.
(4). Whether any legislation is needed with regard to land let for building purposes, and, if so whether the provisions of the draft in this respect are approved?	(4). The present law is unobjectionable, and all change is to be deprecated.
(5). The same question with regard to merger?	(5). The same answer.
(6). Whether the proposed law for registering tenures is approved?	(6). The proposed law is approved, as in accordance with existing custom.

* The impression was that the status of the ryot would be raised if he was made a tenure-holder. The Hindustani words used to imply this in the draft.

Questions.	*Resolutions.*
(7). Whether it is expedient to confer on resident ryots rights of occupancy with regard to land held by them for three years as provided by section 81 of the draft?	(7). This concession is strongly deprecated. At present, landowners prevent the growth of occupancy rights by granting leases for five years only, or by changing the lands, or by managing so that a ryot shall never hold at the same rent for twelve years. In practice the last expedient is found sufficient, as the courts find claims to occupancy rights not proved, unless the ryot can show that he held the same land for twelve years by proving that he paid the same rent. Under the proposed law zemindars would not suffer ryots to remain for three years.
(8). Whether the definition of *zerat* lands in section 81 is correct?	(8). It is incorrect, as requiring that the land should have been twelve years in the possession of the landlord to become *zerat*. All lands become *zerat* when taken into the landlord's hands.
(9). Whether a ryot should have a right of occupancy taken in exchange for land on which he has such a right?	(9). He should not.
(10). Whether it is right to enact that the landlord's share of produce, where rent is taken in kind, shall in no case exceed one-half?	(10). The zemindar in some places gets $\frac{9}{16}$, in some $\frac{3}{5}$ of the produce. It would be unfair to diminish his share. On the other hand, where land is plentiful the ryot gets more than one-half, and it would be unwise to alter this custom.
(11). Whether the provision for the valuation of crops in section 84 is approved?	(11). It is approved.
(12). Whether the provision for filing valuation papers in section 85 is approved?	(12). It is not approved. If the system is introduced, the time should be extended to two months.
(13). Whether the provisions of section 86 for changing *bhaoli* into *nagdi* are approved?	(13). They are not approved. Bhaoli is generally profitable to resident landlords and often very convenient, as supplying them with the grain they want for consumption.
(14). Whether the provisions for obtaining tables of rates and enhanced jumabundies through the Collector are approved?	(14). There was at first some difference of opinion on this point, dislike being expressed to the work being done by Deputy Collectors. But after discussion the answer was unanimous, that the provisions were approved.
(15). Whether occupancy rights should be declared transferable?	(15). They should not.
(16). Whether the provisions for realizing rent by the sale of occupancy rights are approved?	(16). They are not approved.
(17). Whether the landlord's right to distrain for rent should be abolished?	(17). It should be retained. Without this right it would be impossible to realize rent.
(18). Whether the summary procedure of section 173 is approved?	(18). The present law and practice as to procedure in rent cases are satisfactory, and no change is required.
(19). Whether the meeting wishes to express any opinions on other points in the draft?	(19). (*a*) The limitation of enhancement of rent to a quarter of the gross produce is objectionable. (*b*). The provisions as to appointing a general manager are bad. (*c*). The draft would be injurious to the zemindars as lowering their *ijjut*, and curtailing their power. (*d*). Those present wish to be left to manage their estates as they do at present, according to the customs of their fathers and grandfathers.

P. NOLAN,
Chairman.

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No. 1205G, dated Mozufferpore, the 16th December 1880.

From—C. F. Worsley Esq., Collector of Mozufferpore,

To—The Commissioner of Revenue, Patna Division, Bankipore.

With reference to your memorandum circular No. 166R, dated 31st July 1880, and subsequent correspondence on the subject of the Rent Bill, I have the honour to submit the following report.

2. I have already (on 29th and 30th November last at Bankipore) placed the Hon'ble H. J. Reynolds in possession of my views generally, and I propose now to touch briefly on a few salient points only of the Bill

3. *Section* 3—"*Proprietor.*"—I consider the definition of this term both unscientific and inconvenient, and prefer the definition proposed in my own Bill. A co-sharer in a joint undivided estate can, in my opinion, be called a proprietor with as little reason as the foot or the hand can be termed the body.

"*Tenure,*" "*under-tenure,*" &c.—I see no necessity for introducing definitions of these words into the Landlord and Tenant Act Consolidation may be a good thing if a Code is likely to remain in force for 30 or 40 years; but as the new Act will, I presume, be largely experimental, it will be advisable to transcribe in it as few provisions as possible from other existing Acts or Regulations which deal with special branches of the Rent Law. So far as my experience goes, the existing law has not been found defective in the matter of "patni tenures," farms, &c.

4. *Section* 6.—In the "Exception" I would substitute for the words "an estate not permanently settled," the words "an estate which has never been permanently settled." From section 45 it would appear that when a Collector purchases an estate on behalf of the Secretary of State for arrears of land revenue, any previous settlement made with a zemindar is annulled, and that so long as such estate is held by the Collector, it cannot be called a permanently-settled estate.

5. *Sections* 8 *and* 18.—A tenure-holder or ryot may be ruined if he is required to hold all land added to his tenure or holding by alluvion, and if the increase of rent must bear to the rent previously paid the same proportion which the increase of area bears to the previous area; for instance, a ryot may hold 10 bigahs at Rs. 30 rent per annum. If 20 bigahs of sand, on which nothing but melons, gourds, &c., can be grown, are added to his holding by the action of a river, he will have to pay Rs. 90 rent in future, and still get no additional valuable produce for some years. In the case of valuable accretions, I think the provision an unwarrantable interference with the rights of the zemindars. It is the estate, and not a tenure, which should reap the benefits of accretions, whether great or small. The abatement portion of the section seems fair enough.

6. *Section* 11.—There are few cultivators, I believe, in this district to whom the provisions of this fanciful section would apply. I see no necessity for creating a new species of tenure-holders in Behar.

I may remark that the words "a proprietor" would, by the terms of the definition, apparently be sufficient to make valid a demise by a powerful co-sharer in a joint undivided estate, notwithstanding that the other co-sharers may have all been opposed to it.

7. I think the whole of Chapter I might be most advantageously omitted.

8. *Section* 17.—The "Explanation" attached to this section is good. The "Exception" is open to the same objection that I have advanced in paragraph 4 of this report.

9. *Section* 19.—I consider "Explanation 2" altogether inadmissible. The effect of the co-parcener clause in this district will be to provoke constant disputes, and probably riots in joint undivided estates. Each co-parcener, on a holding becoming vacant, will endeavour to instal his own favourite. I also disapprove of a ryot being allowed to acquire a right of occupancy on an estate by *taking* and holding land from a person who claims to be proprietor, unless such person has succeeded in getting his name recorded as proprietor under the Land Registration Act.

10. "*Explanation* 3" (*a*).—No definition has been given of "mukurreedar" or "istamrardar," who are often in this district cultivators holding at fixed rents. Where such ryots may have sublet portions of their lands, they can have had no intention of conferring, nor can the sub-ryots have had any expectation of acquiring, a right of occupancy. To allow clause (*a*) to be retrospective would be very unfair to the lessors, and to make it only prospective would be probably nugatory.

(*b*). This clause is objectionable. The tenure-holder of section 11, though dignified by a new name, is in reality only a ryot, and the acquisition of a right of occupancy under such a ryot is in my opinion, neither desirable nor contemplated by old or modern laws.

(*c*). This clause is as undesirable as clause (*b*).

(*d*). I should omit this clause. It can only be by an oversight on the part of the proprietor that a tenant of *bonâ fide sir* lands can avail himself of a provision of this kind.

11. "*Explanation* 4" (*h*).—I am strongly opposed to this clause, as may be seen by a reference to section 23 of my Rent Bill.

12. *Section* 20.—I heartily approve of this section, with the exception of the word "landlord" in clauses (*b*) and (*c*). These two clauses, I presume, are intended for the benefit of proprietors; but they will enable occupancy ryots holding directly under proprietors, and occupancy ryots holding under such occupancy ryots, to inflict very serious injuries on proprietors. Suppose that A. holds 50 bighas under a right of occupancy from zemindar X. In accordance with section 19, explanation 3, clause (*c*), B. acquires a right of occupancy in

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the 50 bigahs under A. After so acquiring this right, B. is permitted for a due consideration by A. his "landlord" to devise by will or sell 100 plots of ten cottahs each to 100 persons. A. then dies intestate, and without heirs, or absconds. What proprietor X gains by A.'s death or flight is the burden of collecting rent for 50 bigahs from 100 tenants instead of from one. It is obvious that zemindars will not be properly protected by section 20 if occupancy ryots are allowed to confer occupancy rights on others, and to be saluted as "landlords." The above case might be put still more strongly by supposing that A. held the land at Rs. 3 per bigah, and that at the time he gave his written consent to the division of the holding, he reduced the rent all round to Rs 2 per bigah in consideration of a large payment of money. In this case the zemindar, if he wished to get as much rent in future as he had previously received from A., would be forced to institute suits for enhancement against 100 tenants.

13. I concur in the arguments employed in paragraph 32 of the Commissioners' report in favour of legalizing generally the transferability of occupancy rights, and may add that, however convinced the learned Chief Justice (*vide* his minute No. I, page 380, of Commissioners' report) may be, that "to give a poor population, like the Bengal ryots, the means of selling or mortgaging their tenures at pleasure is a very certain means of making them *improvident* and *unthrifty*," I am disposed to agree with those who maintain that "it is the magic of property which turns sand into gold;" at any rate I can state from my own experience that the very numerous petty proprietors of this district pay their revenue most regularly, and stick to their few bigahs of land with cat-like tenacitly. It is indeed this cat-like propensity of the people of Behar which stands so greatly in the way of their material improvement.

14. With regard to clause (*e*) I entirely agree with Mr O'Kinealy that "equitable relief" and not "forfeiture" should be allowed for breach of the conditions of a lease.

15. *Section* 22 (4).—Ryots whose aggregate holdings do not exceed five Behar bigahs (of 4,225 square yards) should not be liable to enhancement of rent under this clause. High or low prices of grain scarcely affect cultivators who must consume all that they produce.

16. *Section* 23 (*e*).—I cannot see the justice of this provision. Road cess and public works cess have nothing to do with prices, nor with rent, except in so far as it forms a basis for determining the amount of cesses to be paid by each ryot.

17. *Section* 24.—I would omit this section. Clause (1) recites a self-evident proposition, and clause (2) is unnecessary. If both parties contract that rent shall not be enhanced, the holding becomes to all intents and purposes "mokurrari."

18. *Section* 26.—This section conflicts with the Sale Law, Act XI, 1859.

19. *Sections* 27 *and* 28.—These sections will in the first instance be very unfair to the zemindar, and their ultimate effect will be to cause yearly ejectments of inferior ryots. A ryot who has held for three or four years only may be presumed to pay nearly the full market rent of his land. Suppose he holds four bigahs at Rs. 20. The zemindar calls on him to pay enhanced rent at 10 per cent., *i e.* Rs. 22. The ryot refuses and claims Rs. 22. The zemindar cannot obtain more than Rs. 22 from a new tenant. The additional Rs. 2 is not sufficient to pay interest at the ordinary rate (12 per cent.) on the Rs. 22 paid away to the out-going tenant. To prevent a similar occurrence in future, the zemindar must eject his tenant at the end of each year or second year.

20. *Section* 29 (*f*).—The planting of fruit-trees may be an improvement, or not, according to circumstances, and should not be undertaken by a common ryot without his zemindar's sanction.

21. *Section* 30 (1).—The words "a proportionate part" are very vague, and the principle here enunciated is wholly inapplicable to the case of such fruit-trees as are ordinarily planted, viz. mangoes, jacks, tar, &c. The value of these would increase yearly up to twelve years, by which time a right of occupancy would be acquired and compensation would not be needed. The proposal to make a civil court's decree for compensation final and conclusive up to Rs. 50 is simply astounding, when it is borne in mind that section 220 proposes to give final jurisdiction in rent suits only up to Rs. 10. It is a comparatively easy matter to decide whether a certain sum has been paid or not; but to estimate the value of "unexhausted improvements" will be often a matter of great difficulty.

22. I think the whole of Chapter IV should be omitted.

23. *Section* 46.—In the case of occupancy ryots, who have under them occupancy ryots (*vide* section 19, Explanation 3—*d*), the superior occupancy ryots in these parts will rarely possess a "sherista" or "rent office," in which they can register successions or transfers by the inferior occupancy ryots.

24. *Section* 48 (*c*).—If the transferrer absconds and omits to give notice of the transfer, and if the transferree does not apply for registration until the last day of the prescribed period (section 46), I do not see how the zemindar can realize his rent for that period. Clause (*d*) will not assist him, because a distinction is drawn in section 46 between "transfer" and "succession." I think that in such a case the transferrer should be primarily, and the transferree secondarily, liable for the rent.

25. *Section* 51 —One year seems too short a time.

26. *Section* 52.—The damages should be 20 per cent. on one year's rent, whether pecuniary loss has resulted or not. The tenant may be just as much inconvenienced by the landlord's refusal to register, and by the consequent necessity of bringing a suit in the civil court, as the landlord may be inconvenienced by the tenant's omission to apply for registration within three months (section 49).

27. *Section* 54.—Unless the copy is to be *primâ facie* evidence of the succession or transfer, it will be useless to provide for the obtaining of a copy

28. *Section* 55.—The dates will not suit Behar. It will be necessary to fix dates for each sub-division in this district.

29. *Section* 57.—On further consideration I am of opinion that the provisions in clause (*a*) are objectionable, and constitute an improper interference with landlord's private affairs. How long is a landlord required to keep a counterfoil, and what is to prevent him from keeping duplicate receipt books, and producing counterfoils which would contradict even genuine receipts? The proposed scheme would only be feasible if all receipt books were supplied by Government duly numbered (an obviously impracticable arrangement). I also think that clause (*b*) should be abandoned.

30. *Chapter X*—Seems generally good; but I would not allow the Court of Wards to have anything to do with the management of estates. A manager under section 67 should not be empowered to grant mokurruri leases or leases for a longer period than three years, as the probable effect of appointing a manager would be to bring on a butwara which would ordinarily be completed within three years.

31. *Section* 76.—The measurement should be made with the standard pole of the pergunnah, and the local bigah should be calculated in the first instance, so that ignorant ryots may understand the measurements and calculations at the time of measurement. If an appeal is to lie from the Collector's decision to the District Judge, it will be better that a moonsiff try the case.

32. Regarding the "special provisions for Behar" I may observe that in demi-official letters dated 10th June and 19th June 1880, I reported fully to Mr. C. D. Field, and that as the letters are mentioned in the list of papers attached to the Commission's report, I see no necessity for reporting again on the subject. I may add, however, that the definition of "zeraet" should only be applied prospectively, otherwise there may be a general appropriation of existing zeraet lands by tenants, and that occupancy holdings purchased by zemindars should, if duly registered, henceforth be zeraet and never again subject to the acquistion of a right of ocupancy. Similarly, no tenants should be entitled to acquire a right of occupancy in land which had been taken up for a public purpose under the Land Acquisition Act, and in which all rights have been purchased out and out. Section 84 (*b*) is quite impracticable. The "proper officers" will not be forthcoming in sufficient number. The procedure suggested in section 41 of my Bill was quite practicable, whereby all the real work of valuation is required to be done by residents of the village concerned.

33. The provisions relating to settlement jummahbundees, enhanced jummahbundees, &c., I regard as altogether impracticable.

34. In conclusion, I may submit that the Rent Bill, in my opinion, is wholly unsuited to Behar. What Behar wants are some simple provisions on the subjects discussed by the Behar Rent committee, an increased number of courts, and cheap and speedy justice. If the last mentioned essential be wanting, no amount of legislation will benefit the majority of the cultivators. Moonsiffs should be invested *at the least* with summary and final jurisdiction up to Rs. 50. There is no subject on which I have more dwelt in official reports during the last five years than the inability of the ryots to stand the delays and expenses attending the prosecution of suits in the civil courts, and I am now not a little surprised to learn from Mr. O'Kinealy's admirable note on Enhancement (pages 439—474 of the Commission's report) that it was the opinion of the Government which passed Act X, 1859 (*vide* Statement of Objects and Reasons) that "to refer a poor cultivator to a regular suit under the practice of the courts, is almost tantamount to refusing him any remedy at all." This has long been precisely my own opinion.

No. 1011, dated Durbhunga, the 14th October 1880.

From—F. H. Barrow, Esq., Officiating Collector of Durbhunga,
To—The Commissioner of the Patna Division.

I have the honour to enclose you the accompanying report on some points of the proposed Rent Bill.

PROPOSED RENT LAW.

The object of the Bill, I believe to be, to raise and benefit the cultivator, by giving him generally fixity of tenure, at a fair and just rent, at the same time to increase the value of the tenure by making it saleable, and otherwise to protect his interests, while at the same time the landlords also are not forgotten.

The means to be used for this appear to be—

1.—Limiting the power of enhancement of rent.
2.—Abolition of distraint.
3.—Sale of occupancy rights, at the same time protection against some extravagance by forbidding mortgage of the same.
4.—Three years' tenure to confer a limited right of occupancy.

(1.) *Limiting the power of enhancement of rent.*—The limits placed on enhancement seem good and salutary, and I doubt if zemindars can complain against them on any reasonable

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grounds. So also the means for settling rent disputes, which embrace a large tenantry, appear well devised, and will probably prevent the wearying contests that now go on, confining action on the part of zemindars to the rich, or those who hand over their rights and interests to farmers in order that they may carry out a hard, distasteful work.

(2.) *Abolition of distraint.*—The question of the abolition of distraint is surrounded with difficulties. Under cover of it much oppression is undoubtedly committed; but again without it, it is hard to see how landlords will in many instances collect their rents. Its abolition is unquestionably good where the landlord has ample other means at his disposal for realizing his dues; but how about where there is no competition for land, and the ryot has nothing to lose by seeking other fields for his labour. Even as it is decampment is not an unusual way of clearing off old scores; and with no hold on the cultivator, the zemindars will have no inducement to bring other land into cultivation. However, as a fact, there would be a species of distraint practised, at all risks, in the case of churs and such like tracts.

To meet such cases I would suggest some such provision as that a landlord on good cause shown may obtain permission from the Revenue Courts to distraint on certain ryots or within a certain area. I will give an instance of hardship to the landlord from want of power of practical distraint.

There is a magnificent chur of alluvial land of some thousands of bighas to the north of the Shahabad district, of which the Maharajah of Doomraon is the proprietor. From year to year alluvion and diluvion took place, and no one cultivated land of fixed area on it. Each year however it was cultivated and produced most luxuriant crops, but means of realizing rent for the land there was none. No one knew, except the villagers, how much land each ryot cultivated, and the zemindar was simply helpless. At last he sued the chief ryots in whose names he had given pottahs some years before, and got a decree for some Rs. 30,000, and with it an order for possession of the land. But as a fact he neither got his money or possession. When the waters receded the villagers as usually settled on it like a a swarm of bees; there was no one else to cultivate it, and he was not only helpless to prevent them, but he could not sue, as each man in his turn would deny that he cultivated. All the same the Maharajah had to pay his Government revenue for the estate.

Now, had he had a power under proper authority to distrain the whole of the "chur" or "deara," till cultivators came forward and claimed the crops and engaged for the payment of rent, his proprietorship would have been an actual fact. As it was, instead of law and order ruling, fraud and disorder had it all their own way One of the consequences of this want of legal remedy is that the zemindar plays off one village against another, which leads to risk often of a fatal nature.

A distraint carried on under direct official permission and in good cause shown, could not be liable to the evils of the present system, and the zemindar could not then complain of the law giving him no practical remedy to secure the collection of his rents, as he may complain if the provisions of the Bill became law.

(3.) *Saleability of occupancy tenures.*—We next come to the proposed saleability of occupancy tenures. The Bill makes them in all respects like mokurari tenures, except that under well defined conditions the rent can be enhanced.

It is objected that if they become saleable, the zemindar's interests will be much damaged and his influence impaired. There is no doubt that if the land was ever sold as readily as movable property, and sales became the rule rather than the exception, there would be much reason in the objection. But it must be remembered that no man sells his land till compelled by most strong motives, and that consequently newcomers into an estate would be few and far between. The direct effect of making such tenures saleable would be to raise the value of land, and so benefit all classes of the agricultural community.

To place restrictions on the mortgaging of tenures has a good deal to be said for it. We cannot then have a universally indebted peasantry, merely toiling to feed a host of money-lenders; and it is beyond argument that the State is interested in the management and cultivation of its soil. It can justly say: "I will only let those have it, who are not weighed down by the impediments of debt. I cannot allow outsiders to have a rent charge on it."

But of course all this rests on the assumption that the ryots would recklessly mortgage their tenures, and if this falls to the ground, the reasons for imposing an artificial restriction on men dealing as they wish with their property disappear.

In Shahabad, where the ryots freely sell their occupancy tenures (which there are generally also mokurari) no such tendency to recklessly part with their land to mahajuns is found. Very often the mortgagee is himself a ryot, and mortgage is only another way of sale. By it the full value of the tenure is obtained; for, as the first mortgage is a kind of conditional sale, the ryot can at any time make better terms with another man, and taking his higher price, pay off the first mortgagee.

Not to be allowed to mortgage what he could sell would be felt to be a great hardship by the ryot. In many instances he must have money, and if he sells he does so in a hurry, and does not get the full price. If he mortgages and does not wish to redeem, he is able at his leisure to demand the full market price.

A reference to the registration returns will show that the greatest number of mortgages take place in the district of Shahabad, the numbers being 2,662 for 1879-80, 3,373 for 1878-79, and 2,309 for 1877-78, and of these we may safely assume the greatest part are

mortgages of ryots' tenures. It would most certainly be useful to enquire whether the results has been general indebtedness of the ryots. No one who has been long in Shahabad would suppose so, but rather the contrary; and with this fact before us, it seems hardly necessary to assume that ryots may safely be given the power of selling, but not of mortgaging, their tenures.

This restriction on mortgage is not based on broad and general principles, for if it is bad for occupancy ryots to mortgage, so is it also for petty proprietors. In Tirhoot the number of them is very large, and to all intents and purposes they are like occupancy ryots, except that they have "milkizat" (malik's property), which they can sell or mortgage. The registration returns do not show that they are recklessly involving themselves, and I see no reason to anticipate that an occupancy ryot would act differently.

It should be remembered that no mortgages can take place without being registered. If, therefore, after making occupancy rights saleable, it should be discovered that they were being recklessly mortgaged, it would be very easy to withdraw the power, and at the same time an economical fact would be established, which at present exists only in vague surmise—at least for this part of India.

(4.) *Occupancy rights after three years.*—I am sure the proposition to give quasi-occupancy rights after three years will find no favour with the zemindar; nor do I think it a politic and desirable measure. As it is, if all ryots who had held their lands for twelve years could be secured in that possession, and if all the desired benefits could be conferred on them, there would be little else needed; the waifs and strays of agricultural life could then be well let alone. I do not see why the zemindar should not retain the right to do as he likes with land in which absolutely no one has acquired any vested interests. Such a provision in the law would, I believe, prove very distasteful, as well as injurious, to the zemindars, without any compensating advantage to the community. Zemindars' mofussil agency is so weak and corrupt that the three years' term would be continually accruing against them, and they would be deprived of rights continually by fraud and surprise. In this some of the best would suffer, while the very sharp and lawyer-like escape.

Again, this provision might work most injuriously in the estates of petty zemindars. At present these men are often ordinary cultivators, cultivating perhaps one-half of their estates of 20 or 30 bigahs, and letting out the other half. It is very questionable whether it is advisable to give the tenants of such men occupancy rights, simply because the owner has let them cultivate for three years. Whatever may be the policy however, it is undoubtedly an interference with his property, giving him a life-long tenant when he only wanted one for three or four years. In Tirhoot such petty landlords are very numerous, and they are not uncommon in Shahabad.

I would suggest that no additions be made to the ordinary twelve years' rule to secure occupany ryots (by which term I mean men who have held for twelve years) against arbitrary ejectment and enhancement, and there is little left to be desired.

My experience, gained in working the criminal law, is that a great number of illegal ejectments are made dead in the teeth of the law. A zemindar wants to eject a ryot, and he accordingly tells another man to cultivate his field. The possessor comes and complains, but, as a rule, his complaint is dismissed as one fit only for the Civil Court. The zemindar through his amla or nominee has set up a defence of its being zerat land, or the lease having terminated, or such like, and either the case gets thrown out on the police report or by the Magistrate. Very often, no doubt, if the case were taken to the Civil Court, the ejectment would be sanctioned, but very often it would not. Many an obnoxious ryot's back, I believe, is broken in this way; for it is needless to say that being dispossessed the ryot has to bring the suit instead of the zemindar, and on him lies the burden of proof and somewhat greater expense, besides being out of possession and so losing the means whereby he earns his bread.

I believe, then, that without any alteration of the substantive law, the ryot would be much helped towards acquiring occupancy rights if the Act laid down that no ryot cultivating any land could be turned out of it except by the order of the Civil Court, and that any one so ejecting a ryot would be guilty of criminal trespass. This would have a double effect—it would prevent these illegal ejectments to a great extent, and make the landlord careful to have a written agreement before admitting tenants. At present if a landlord can show that he ejected a ryot under cover of some claim, it seldom amounts to any offence, and when he has once done so *factum valet*, he benefits by his own wrong. The provision should be that the ryot be restored to possession till ejected by due course of law. No objection could be taken to this by the zemindars, because it is not depriving them of any right, but merely prescribing the way they shall exercise it. But these cases must be cognizable by the Criminal (or Revenue) Courts, or the remedy is too slow and expensive to be of any use.

Dated Chuprah, the 15th December 1880.

From—A. P. MacDonnell, Esq., Officiating Collector of Sarun,
To—The Commissioner of the Patna Division.

I have the honour to submit the following remarks on the Bill prepared by the Rent Law Commission, and circulated for the opinion of local officers. I do not purpose to go over the whole ground covered by the Bill, nor to follow always the order of its sections.

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Portions of the Bill will, perhaps, commend themselves to all parties, and comment on these is needless—other portions will be disputed, and if I restrict my observations to so much of these latter, as I feel myself capable of discussing, there will be a greater chance of your benefiting from what I have to say, than if I were to set before you the crude result of hasty and immature reflection.

2. Actuated by similar motives, I leave to officers in Eastern districts the task of discussing those provisions of the Bill which have special reference to the state of things in Bengal Proper. If I can make any contribution towards the solution of the Rent Problem in Behar, I shall be satisfied.

3. It is beyond doubt that the relations between landlord and tenant in Behar are at the present time unsatisfactory. Before Behar landlords were frightened by this Bill into thinking that, if they stirred at all on this rent question, they might fall (to use a colloquialism) from the frying-pan into the fire—they were as loud in their complaints against the existing law as ryots were. The Rent Law Commission recognize this fact, when, at page 156 of their report, they enumerate, as the objects of legislation for Behar, "protecting the ryots from illegal distraint of crops, illegal enhancement, and illegal cesses, enabling them to maintain their occupancy rights, and suppressing the abuses incident to the realization of rent in kind." Elsewhere, also, in the report, the difficulties landlords experience in realizing even just dues by legal process is fully recognized. Were it not that in real life, things are never so bad as they seem, one would be justified, from this unanimity of popular feeling and experts' opinion, in saying that the existing land system of Behar suffers, in a greater or less degree, from almost every abuse calculated to depress agricultural prosperity, and complicate the relations of those having interests in the soil.

4. Now, the evils, which undoubtedly exist in the Behar land-system, are not a growth peculiar to the province, though they are certainly tinged with a local colouring. As far as my information goes, they have had their counterparts in other countries, and, wherever time and circumstance have worked out the cure, the remedy has invariably taken the form of fixity of tenure for the cultivators of the soil. That, too, is the form of remedy which the Rent Law Commission would prescribe for Behar, and in the object aimed at I entirely agree. The adequacy of the means proposed, however, is open to question.

5. Before discussing the Commissioners' proposals on this matter, which, for Behar, is by far the most important matter dealt with in the Bill, it may be well to state briefly the reception the proposals are meeting at landlords' hands. As desired, I have striven to elicit their opinions. All those zemindars, to whom I explained the main points of the Bill, as well as those who have been able from the Government translation to master them, have expressed themselves opposed to facilitating the acquisition of occupancy rights. They deny that their ryots stand in need of protection, being already, they say, too strong for the zemindars. They deny that ryots are rack-rented—they declare the creation of occupancy rights will not facilitate the recovery of rents, for no one, they assert, will buy an occupancy right except the landlord, who, next moment, must let the land to the defaulting tenant or be content to see it lie idle. Finally, they say, it is hopeless to expect that without the power of distraint a zemindar can manage to get his rents, or pay the Government revenue. The zemindars I have conversed with do not yet seem to fully realize what the effect of the enhancement procedure will be, as far as it depends on the establishment of pergunnah rates. Their opinions in this matter are therefore valueless. But I am inclined to think their instinct and pre-possession is against the intervention of the Collector between them and their ryots. They suspect, and with reason, he will act as a "buffer," and retard enhancements. On the whole, it may be said that, as a class, zemindars do not receive this Bill with satisfaction, and I believe, that unless it be much modified, they will strenuously oppose it.

6. I now return to the Commissioners' proposals for facilitating the acquisition of occupancy rights in Behar. They propose that if a ryot, who has held any land in an "estate" for 12 years, can prove that before a certain day, to be fixed by the Act, he has for three consecutive years cultivated a particular plot of non-zerat* land in that estate, he shall have a right of occupancy in that plot. This is the provision which the Commission think will "effectuate the acquisition of occupancy rights as far as that can be effectuated by the Legislature."

7. Now, let us strive to picture to overselves how that provision, if passed into law, would work in Behar. Either the decisive date would be fixed shortly after the date of promulgation of the proposed law, or at a distant period. In the former case, it is absolutely certain that, through ignorance of the law, no ordinary ryot will be able to avail himself of it. In the latter case, there is more chance of ryots getting to know what their rights are, but if the admission of those rights depends on the assertion of them, within any moderate number of years, it will be necessary for local officers to establish in their districts a sort of propaganda for diffusing knowledge on the point. If it has taken 20 years to diffuse among the people the very vague ideas prevalent as to the occupancy clauses of Act X, how can we expect so much quicker apprehension now? When Collector of Durbhunga, I sought to mitigate the abuses of distraint, and with that view set about teaching the people what their rights were in regard to that matter. I spent two years at this work, employing written and oral methods of instruction, and interviewing the majority of the

* NOTE.—Here, in passing, I may note that the definition of "zerat" land, in section 81 of the Bill, seems to me objectionable. In Behar, maliks zerats are often cultivated on the bhaoli system—often let on leases renewed over a period exceeding 12 years. Neither of these kinds of undoubted zerats is covered by this defective definition.

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villagers in the district. At the end of the time, I had not succeeded in dispelling all the ignorance on the point which had existed. Is it to be expected that, with the landlords banded together to prevent their ryots being enlightened as to this proposed law, more success will follow, even as persistent exertions, now?

8. It seems, then, to me, that the provision fixing a precise date, on or before which occupancy rights are to be claimed, must be altogether abandoned as impracticable. The Commissioners themselves seem to have apprehended the possibility of this abandonment, when, in paragraph 152 of the report, they note, as worthy of discussion, whether "three years ought not to be held sufficient in future to confer a right of occupancy in Behar."

9. If it were simply a question of new tenants settling for the first time on a zemindar's estate, then I would say that three years' continuous cultivation of land is *not* sufficient evidence of an intention, approved by the zemindar, to cultivate that land permanently, and I assert that in this matter, the zemindar's approval is an important factor. Mr. Mackenzie says, our object in taking up this question at all is "to widen the basis of agricultural prosperity, to diminish the risk from famine, and to create a substantial tenant-right." I agree in this statement of objects, and I think that evidence of an approved intention to cultivate permanently should enable the cultivator to claim protection from arbitrary eviction and arbitrary enhancement. The twelve years' rule, introduced by Act X, was, in my belief, nothing more than an arbitrary period, framed with a view of ascertaining whether a ryot was "resident," and whether that permanent cultivation of his holding was to be expected of a new ryot, who had settled on the lands. The experience of the last 20 years has shown how inoperative that provision of Act X has been in Behar, and therefore I am in favour of such a modification of it as will secure to the ryot a better chance of asserting his rights, while not abolishing the zemindar's discretion in the matter of admission of new ryots. I think that the period of three years, suggested by this Bill, would virtually abolish that discretion. Instead of reducing the period within which new ryots may acquire occupancy rights, I would, in their case, leave the present period of 12 years unaltered: but by insisting on the interchange of pottahs and cabooliats, and by compensation for capricious disturbance, and for improvements, secure guarantees for the growth of occupancy rights, and for proof of the same.

10. But in the case before us, it is not simply a question of new tenants settling down in a zemindar's lands. It is chiefly a question of ryots who have lived and cultivated land in the village—the majority of them for generations—the smaller number for many years. Illiterate, and in the hands of the zemindar, as far as accounts go, the ryots cannot prove the status required of them, though the universal sense of the province believes this status to exist. Our registration offices show that those occupancy or kastkari rights are now mortgaged—our civil court records and our registration offices show they are sold. It is a question, then, whether the Legislature should not recognize this general belief, and give its sanction to growing custom, by declaring that a ryot has, from date of passing of the Bill, a right of occupancy in the land he holds within the mouzah in which he lives.

11. Reserving for a moment the discussion of the equity of such a proposal, I wish here to point out that, limited to the lands situated in the mouzah in which the cultivator resides, my proposal goes hardly so far as the suggestion of the Commission that three years' holding should give a right of occupancy to *all* land, irrespective of the cultivator's place of abode. Suppose that this latter suggestion be adopted—then, one of two things will happen. Either the zemindars will, by breaking the continuity of the holding, frustrate the action of the law, or they will acquiesce in the law, and allow rights of occupancy to grow up. Now, in the case of new in-coming ryots, I can sympathize with the zemindar breaking the continuity of the holding. It is only fair he should exercise a well-considered choice as to who shall be his tenant, and such a choice cannot be made in so short a period as three years, which may be all prosperous years, or all adverse years—either ill-suited for testing the ryot's capabilities. But in the case of ryots whose status in the village is now established, and can be proved from official records, an effort to break the continuity of such a ryot's holding could not be approved so readily. That plan, if practised on a large scale, would frustrate the object of the Legislature, lead in a short time to agrarian disquiet, and would have to be prohibited.

12. If, then, care be taken, as it must be, that the acquisition of occupancy rights be not vexatiously frustrated by some zemindars, and if other zemindars acquiesce in the acquisition of such rights, what real difference to zemindars is there between the declaration to-day or three years hence that a certain class of ryots shall be deemed to have such rights as the intelligent sense of the province now admits them to have, and such as no zemindar can, with any regard to veracity, say do not now exist?

13. Returning to my proposal to confer occupancy rights on all khudkasht ryots, I wish to remark that a justification for such legislative recognition of the occupancy rights of khudkasht ryots is sought for in the revenue history of the country by Messrs. O'Kineally and Mackenzie. If their historical arguments do not establish the point that khudkasht ryots, to quote from the appendix to the report of the Select Committee of 1832, "have an established permanent, hereditary right in the soil they cultivate, so long as they continue to pay the rent justly demandable from them with punctuality," then, in my belief, the point is incapable of being established by research. But although it is well to have history on one's side in such a discussion, the question is not now to be decided by appeals to the past, but by appeals to the present, and to the future. Relations between landlord and tenant in Behar are not the result of contract so much as of immemorial custom—and Behar landlords

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can claim no higher title to arbitrarily evict ryots and arbitrarily enhance rents, than Irish landlords could do, and if, in the interests of the majority, the Imperial Parliament has thought fit to limit landlords' rights in one case, the Indian Legislature is equally competent to do so in the other. The question, in truth, is not a historical but a practical one—fixity of tenure for the Behar ryot has become essential, and the only question is how best it can be conferred.

14. I think that tenant-right or occupancy right of in-coming tenants should be the growth of time—for a landlord must be allowed a choice in the question who shall be his tenant. The experience of Act X has shown that the growth of such a right may be readily frustrated, and therefore it is that, having regard to the circumstances of the province, I say that the Legislature should at once recognize the fact that khudkasht ryots have now occupancy rights in all the lands they hold within the mouzah they live in, leaving to time to ripen their rights in the lands they hold in other mouzahs.

15. Why, you will ask, do I claim the mouzah as the envelope of the occupancy rights of its resident cultivators? why do I not adopt the "estate" as this Bill does? My reasons are these—by adopting the arrangement by "estate," we deprive the existing, though unacknowledged, occupancy ryot of his right in those lands, which, by the action of the Batwara law, may have been partitioned off from the "estate" on which his house may happen to fall. That would be in Behar, especially in Behar north of the Ganges, a grievous hardship on ryots, and would frustrate the law. The mouzah is a recorded definable area—it was originally the envelope of all the occupancy rights of ryots living in it, and though it may have since been split up into several "estates" by the action of the Batwara law, the rights of ryots suffered no legal division, but remain conterminous with their holdings in the still undivided mouzah. To limit a ryot's right of occupancy to the "estate" to which he has been portioned off would be to create confusion by establishing a law antagonistic to a law and to a custom aleady existing. If the "estate" were larger than the mouzah, as sometimes happens in great zemindaries—a Durbhunga or Huthwa Raj—there, no loss but gain, would result to the ryot from making the estate the envelope of his rights, but such a provision would savour of legislation directed against the great zemindar, and being really unnecessary is to be deprecated.

16. If, however, the Legislature be unwilling to depart so far from the Bill as to recognize that ryots residing in a mouzah, at the time of passing of the Act, have occupancy rights in the lands they cultivate in that mouzah, then the question is, should the proposal of this Bill be accepted that three years' holding confers occupancy rights, or should the present 12 years' rule be adhered to, fenced round by such safe-guards as will secure proof of the holding and the protection of the ryot from such vexatious harassment as he may be exposed to with a view to the prevention of his acquiring any rights? In the case of resident ryots, that is ryots residing in the mouzah or village to which they are attached, I, of course, believe three years ample to enable zemindars to judge the character of his ryot and his intention to cultivate permanently, because, as a rule, the zemindar is sufficiently enlightened on more points already. But in the case of non resident paikust ryots, I think the period too short, while I would willingly allow to resident ryots an acknowledgment of a right of occupancy after three years. I would abandon the three years' period in case of non-resident ryots in favour of the present period of 12 years, making in both cases good provision for the record of the ryots' status by insisting on the interchange of pottahs and cabooliats for the future. A double standard, however, is in my belief objectionable, and if occupancy rights of khudkasht ryots are not now recognized by the Legislature, I would prefer to adhere to the Act X rule—a rule of 12 years, fenced round with the safe-guards: I have mentioned compensation for improvements and compensation for disturbance on the lines laid down in section 28 of the Bill. But this as a *pisatter*—I pin my faith to the concession of occupancy rights to resident ryots, and the maintenance of the 12 years' rule in other (paikust ryots) cases.

17. The Bill contemplates the abandonment of the effort now being made to bring the putwaries in Behar under control, and so secure some record of village facts and rights. But if this abandonment be carried into effect (which I for one should regret, even on grounds of general administrative utility, quite apart from the rent question), some provision must be made to secure to the non-occupancy ryot written evidence of the facts of his holding, else the same jugglery of jummabundis,* as now exists, will continue, and the ryot will find it impossible to prove even three years' continuous holding of the same plot. I am a great advocate (*pace* the theories of the Rent Commissioners' report) for the reduction to black and white of the terms of the holding. I do not care what form this reduction takes—whether it be that of a regular pottah and cabooliat or of a "chitta." I have known ryots have an objection to pottahs on the ground that they trench on what they call their "kastkari" rights. If "kastkari" rights were acknowledged by the Bill, of course that objection would disappear at once, while, in regard to paikast lands, I have never heard the objection urged.

18. I now pass on to the incidents of an occupancy right. I agree with the Bill in thinking it should be transferable by gift, and heritable, but on further consideration, I

* NOTE.—I observe, in the Rent Commissioners' report, some remarks regarding the alleged custom of interchange of plots among ryots, and some historico-philosophical reflections in regard to that matter. Those remarks and reflections are mainly irrelevant. Interchange of land between ryots in a zemindary occasionally occurs—but it is the rare exception not the rule. Manipulation by putwaris of the village jummabundis, to prevent the identification of the plot held this year with the same plot held five years ago, is of usual occurence to prevent proof of continuous holding, and to furnish evidence of the contrary as well as of a change in rates.

hesitate to say it should be devisable by will. I see nothing in the habits or mode of thought of the people round to make me look on this proposal as other than an unnecessary innovation. But if others see differently, there is nothing radically objectionable to me in the proposal. I strongly dislike the provision that the occupancy right should be voidable for breach of special stipulations. This provision seems to me as objectionable, as the permission the Bill seems to allow the parties of contracting themselves out of the action of the occupancy clauses. I should not be surprised if both of these provisions were utilized by landlords to frustrate the intention of the Legislature, and prevent the growth of occupancy rights altogether. A similar permission was, if I remember rightly, deduced from the provisions of the Irish Act by the agents of a large landed proprietor in Leinster, and utilized with the object of frustrating the objects of that Act. Unless precautions are taken, similar results may follow here. Contracting oneself out of the act should be altogether prohibited to a ryot.

19. Regarding the proposal to make occupancy rights transferable by private sale, I have to say that zemindars, as a body, view the proposal with repugnance. Yet I challenge any one of them to deny that kastkari rights are not at the present moment bought and sold more or less frequently in every district of Behar. I shall probably be told that the rights thus dealt with are "mooroosi" rights, which have descended from father to son through many generations. But those so-called "mooroosi" holdings are undistinguishable from occupancy holdings, for it may, without fear of contradiction, be asserted that in no zemindary in the provinci, have the rates remained fixed for 20 years. I have striven to elicit the true grounds of zemindars' objections to this provision of the Bill, and as far as I can see, the objections are mainly two-fold—a fear that the unrestricted right of sale would result in objectionable strangers gaining a footing in the estate (in indigo districts the intrusion of indigo-planters is feared), and the belief that the *prestige* of the zemindars' position would be lessened by any open acknowledgment by the law of such a ryot's privilege. Zemindars view the matter mostly from a selfish point of view, which, though on some grounds regrettable, is, on others, not without its advantages.

20. Now, I confess I have no great sympathy in matters of legislation with that jealous temperament which would exclude outsiders from entrance into the village community. I know how "hot" (to use an expressive colloquialism) a village can make it for an objectionable interloper, no matter how strong-willed he may be. I know that the fear of indigo, though still not groundless, is not so full of justification as it once was. As far as the ryot is concerned, then, this fear of outside intrusion is not so forcible as one on theoretic grounds might suppose, but as far as the landlord is concerned, I admit that it is not groundless. The presence of an independent outsider in a village would be likely to impair his influence. This might not be without its advantages, but on broad grounds of policy, the maintenance of the zemindar's influence is an object to be observed The concession to the zemindar of a right of pre-emption would, in the case of wealthy landlords, enable them to exclude objectionable outsiders, but such a concession would be futile in the case of poor landlords, and in the frequent cases of numerous co-sharers divided, as they often are, among themselves. If the objections of zemindars are to be regarded (and some regard is due to them), I see nothing effectual, short of prohibiting the sale of occupancy rights, which is in truth impracticable, or qualifying the right by limiting its exercise to cases in which the landlord's consent has been previously obtained. If the denial to the ryot of the power to *mortgage* his holding be a wise provision, and for the present I think it is, then, consistency would seem to require some limitation to the right of *selling* the holding, otherwise the liberty to sell will be employed to neutralize the prohibition to mortgage. Such a limitation might be found in the mutual agreement of zemindar and ryot, and as much for this reason as that the practice of this right, in places where it does not now exist, should follow the course of natural growth, I would recommend that where no custom of sale is established, the consent of the landlord to such a sale be made necessary.* Where a custom of unstricted sale is established, we may assume that it has passed through the stage where the landlord's acquiescence was necessary, and that, as now existing, it satisfies the peoples' requirements. I would, therefore, not interfere with it. In course of time the restriction on the right we now propose to give, will also, with the restriction on mortgages, fall into dissuetude and be repealed. Indeed, I should not be at all surprised, if ingenuity, sharpened by necessity, find a speedy legal way of making the occupancy right as valuable with this restriction on mortgages as without it. That such will be the result, if the unlimited right of sale be allowed, I have no doubt whatever.

21. In case an occupancy ryot falls into arrear, the landlord must, by this Bill, sell the occupancy right before resorting to any other process of recovery (section 64). The right of distraint of crops is not recognized by this Bill. Now, I have no doubt that occupancy rights in Behar will become in a short period the valuable property they are in those parts of Bengal in which they are recognized. But in the beginning there will be ignorance of the law, doubts regarding titles, &c., and I should not be surprised if at first the forebodings of the zemindars I have referred to were verified, and purchasers of such rights be few. Therefore, as much in the interests of the present generation of ryots, who ought not to be sold out of valuable rights for a song, as well as in the interests of the landlords, I deprecate the abolition of the right of distraint even in respect of occupancy holdings. The Commissioners themselves vacillated in the question of making the landlord proceed first against

* Provision would, of course, be made to prevent the ryot's right of sale being neutralized by a capricious and groundless withholding of consent by the landlord.

the occupancy rights. The decision on this point come to at their sixteenth meeting reversed the decision come to at the fifteenth, while I do not find in their proceedings any consideration of the effect which proceeding immediately against the tenure will have on the ryot.

22. I have had a good deal of experience of the use and abuse of the right to distrain. I know it has been preverted to ends foreign to its object, but I know also that if a Magistrate-Collector only exercises with attention, perseverance, and firmness the legal powers with which he is vested, such misuse of the right can be checked. Instead of abolishing the right of distraint forthwith, I would it retain in the case of occupancy holdings. I want to avoid bringing occupancy rights to auction sale as much as possible. Such sales would indeed benefit the indigo industry, as the Indigo Planters' Association seems to recognize, but though I am anxious to do what I can for that industry, there are larger ends to be secured. The security of the Government revenue depends on the speedy realization of the landlord's rent, the prosperity of the Province depends on the prevalence of harmony between zemindar and ryots. The right of distraint is an immemorial custom which effectually secures the first point, while distraining a ryot's crop sets the ryot less against the zemindar than a suit in court to sell him up would do.

23. Passing, however, from occupancy to non-occupancy holdings, I cannot but express amazement at the credulity of the Commissioners that, without a right to distrain, zemindars could ever collect their rents. I speak on this point with the intimate knowledge derived from the personal supervision of wards' estates, and the personal management of Government khas mehals. Without the exercise of the right of distraint of the crops of ryots who are here to-day and away to-morrow, or without the knowledge on the ryot's part that such a right exists, and may be immediately exercised, a zemindar has but small chance of getting his rents. It may, perhaps, be said that the abolition of the right will hasten on the growth of occupancy rights in respect to all lands. But a forced growth of that nature would be unjust to the zemindars without relieving the disabilities of any deserving ryots. Therefore I am not in favour of the abolition of the landlord's right to distrain. I believe that checking the abuses of distraint is a matter for the executive—fully within the power of the executive to check. Under fixity of tenure, we may expect ryots to grow more self-reliant, and in proportion to their independence and to the firmness of the district administration will the abuses of distraint disappear. Hedge round the exercise of the right with safeguards as has been suggested, though in this, as in any other matter which pre-eminently calls for mutual concession between landlord and ryot, I deprecate the introduction of the "court" save as a last resource to solve difficulties. For the sake of the ryot, who could better afford to have his whole crop attached than his right sold up, as well as in the interest of the zemindar who wants a speedy and effective means of getting his rent, preserve what has indeed been often misused, but is still capable of being used with general advantage. This is my considered opinion, and perhaps I may be permitted to say that the experience I have had of the uses and abuses of the right of distraint, and the possibility of checking the abuses, enable me to offer an opinion on the point.

24. From measures for the recovery of arrears of rent to the acknowledgment of rent when recovered is a natural transition. The question of the form of rent receipts was one which attracted the attention of the Behar Rent Commission, and certain proposals made by them have been embodied in this Bill whereby zemindars are bound to keep receipts in counterfoil, &c. The object is to guard the rent-payer who is at present too ignorant to guard himself against excess payments by securing the specification of the date and the year or kist for which payment is made.

25. Now, the more I see, the more am I convinced that anything in the way of prescribing the mode in which people are to transact their private business is out of place in a law. Counterfoil receipts and all the rest of these proposals seemed to me excellent some years ago. They are excellent methods I still think for business men, but we do not legislate for business men alone. What is wanted is a self-acting principle, like the principle of compensation in section 28 of the Bill, which shall protect the ryot without imposing any unnecessary liability on the zemindar. Such a principle is to be found in this provision (I am indebted for the idea to Mr. Nolan, Collector of Shahabad), that, if the receipt do not specify the year and kist for which payment is made, it shall be held to be an acquittance in full up to date. Be it always remembered that the evil to be cured is not so much the withholding of receipts as the granting of a receipt in which the payment is credited to 'hal bakaya' ('current' and 'arrears') without any specification of demand or date for which the payer makes payment. It is the duty of the zemindar—no newly-imposed duty—to give receipts specifying certain things—the holding—the rent paid—the demand for which it is paid—and the date of payment. No matter what the form of receipt, if it contains these particulars. If it is deficient in them, let the ryot not be the sufferer. Make the receipt for him an acquittance up to date. Unless dishonestly-minded, the rent-receiver can have no objection to give these particulars, which, indeed, he has been always bound to give.

26. Section 57 taken with section 88 of the Bill enables a tenant, from whom a receipt is withheld, to recover from the landlord damages equal to double the amount of the rent paid. This provision seems to be useless. The sub-division of holdings, especially in North Behar, is great, and the amount of rent payable at a kist is not, in individual cases, large. Instead of allowing a suit, which will rarely be brought, or as an alternative to it, there might be some summary procedure by which a ryot might have a notice served on his landlord to grant him a receipt within a stated time (say ten days). In default of receipt, or of

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objection, the court might grant a certificate which would be valid as a receipt. The ryot might be empowered to deduct certified legal expenses from the next payment of his rent.

27. I now pass on to the important questions of the enhancement of the rent of occupancy holdings, and the novel procedure prescribed by the Bill. In this regard I first offer some remarks on the grounds of enhancement given in section 22 of the Bill.

28. The first ground of enhancement is the fact that the rate of rent is below the *prevailing rate* payable by the same class of ryots for land of a similar description, and with similars advantages in the vicinity. The chief interest here, in my opinion, centres in the expression *prevailing rate*. In the proceedings of the Commission (ninth meeting, page 240) I find an observation by Mr. Mackenzie to which no objection seems to have been taken, and which seems to identify "prevailing rate" with "average rate." But obviously, if enhancements can be made up to average rates, the zemindar is furnished with a means of forcing enhancement. He may introduce "into the vicinity" creatures of his own at high rates, and then make those rates factors in the calculation of the average. This should be provided against by some such words as those of Mr. Field's amendment (page 241 of the Proceedings): "rate commonly paid" or some words to show that the rate up to which enhancement is possible is a rate really, though it may not be exclusively, existing, and not one to be determined on the average of existing rates.

29. Regarding the second ground of enhancement, I wish to draw attention to the case in which holdings had originally been let, more with reference to specified boundaries than with reference to area. The Commissioners have left such cases to be decided by the court, yet I know of hardly anything which causes more discontent among the people in the cases I refer to than this ground of enhancement, which they look on as jugglery with their holdings. Referring ryots to the civil court in such a matter is often tantamount to a denial of justice. They cannot afford it. I would point out that though the nominal area of the holdings in such cases is increased, the ability of the ryots to pay an enhanced rent is not increased, and the *only equitable foundation of these enhancement provisions, is the ability of the ryot to pay increased rent.* I would therefore suggest that, in the cases I contemplate, that is, cases in which the boundaries are specified in the demise, no enhancement should take place, save in conjunction with the third or fourth ground in section 22 of the Bill.

30. In reference to the third ground, the only objection I have is connected with the expression "or at any subsequent time." I can conceive the case of a temporary decrease in the productive powers of the land, or in the money value of the produce, and, as the section is now worded, that period of temporary depression might be taken as one side of the proportion. I wish to have it clearly declared that the final word of the clause "from causes not merely temporary or casual" apply as well to the former period of comparison as to the latter period. The same criticism applies to the fourth ground which, however, seems to me to call for additional explanation.

31. Enhancement on this fourth ground is based on a comparison between the prices of produce at the date of the enhancement proceedings, and the prices prevailing at some previous period. Section 23 further provides that the enhanced rent may, in some cases, reach one-fourth, and, in other cases, three-tenths of the value of the gross produce of the land. This gross produce is to be calculated on the basis of the annual lists of prices prepared under section 122 of the Bill.

32. Now, what I wish to point out is the difficulty—amounting almost to impossibility—of preparing a list of prices, on which the calculation provided for in clause (*c*), section 23, can be made. We cannot take the prices prevailing in known bazars or marts, for those are much higher than the rates at which the ryot sells his grain on his threshing floor or in the rural hât. A calculation made on bazar rates, with a view to ascertaining the one-fourth or three-tenths of the value of the produce would lead to an enhancement of the ryot's rent far beyond what is contemplated or beyond what the ryot could pay. We cannot get anything like correct information of the rate at which the ryot sells the grain, and, therefore, I believe, any calculation appealing directly to rates other than those of well-known bazars will infallibly lead to mischief

33. But if we cannot get accurate information on which the calculation contemplated in clause (*c*), section 23, can be equitably based, we are not in such straits when the idea of comparison comes into play. The same ratio which at one period prevails between bazar *retail* rates and village *wholesale* rates will, for years to come, prevail also at another period, although, of course, the tendency, fostered by improved communications, is towards an equalization of prices over a district. Very many years, I may say generations, must pass before equality of rates is reached, and bazar rates become also those of the village hât. We have, or with a little organization, shall have, reliable means of ascertaining the *retail* rates in the chief bazars. These retail rates, utilized on the comparison basis, should be worked into section 23, clause (*c*), in substitution for the direct calculations now provided for by it. The idea of basing any calculation whatever on the price for which the ryot sells his grain at harvest-time should be eliminated from the Bill. Having some experience on this matter, I venture to say it will be for an indefinite period utterly impracticable to frame any such list of prices. All we should aim at doing is framing a list of retail prices, which may reasonably be expected to bear for years to come in Behar a fixed ratio to those other prices which cannot be ascertained, and then working out the principle with reference to these retail prices.

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34. Another point in this fourth ground of enhancement, to which I wish to call attention, is the fact that, although the increased value of the produce is dwelt upon, the increased cost of production is ignored. But if food grows dearer, wages increase. When wheat is at 15 seers the rupee, one cannot hire labour nor keep plough-cattle so cheaply as when it was at 20 seers. It may be said that this increased cost of production is not relevant when we are dealing with the ryot who is his own labourer. But what of the ryot who hires labour, and what if, as has happened this year in Sarun, mortality among cattle diminishes their number and raises the hire of the remainder? The value of the produce is ultimately regulated by the cost of production, and a rule which, ignoring this economic axiom, raises the producer's rent in proportion to the enhanced value of produce, is surely a one-sided and vicious rule. Increase in the value of the net, not of the gross, produce should alone justify enhancement of rent.

35. Before I pass on from this part of the subject, I wish to call attention to a discrepancy between the Bill as drafted and the principles as settled by the Commissioners. Section 95, clause *b* of the Bill allows a thikadar to sue for enhancement in the civil court under one or more of the first three grounds specified in section 22, no matter what may be the unexpired term of his lease, while it restricts to thikadars, with an unexpired term of ten years, the right to proceed on the fourth ground only before the Collector.

36. At page 241 of the Proceedings of the Commission, no limitation, such as this, was agreed on. It was settled that a thikadar, with an unexpired term of 10 years, might set the Collector in motion precisely as the zemindar, by section 95 of the Bill, is permitted to do. I see no reason why the limitation in the Bill should be preserved. It is not desirable to discourage the granting of long leases by in any way handicapping the lessee. Besides, you will look in vain through the records of the courts for the traces of those abuses which we know to be associated with the thikadari system. It is not by fettering the legal rights of the thikadar, but by firmness and vigilance in seeing he does not outstep them, that the abuses of the thikadari system are to be curbed. To your Collector you furnished in section 131 of the Bill, a powerful means of counteracting abuses when they attain to a certain stage, and that being so, I would not distinguish between the privileges of landlords and of those thikadars who have leases with long terms unexpired.

37. I now come to the procedure set forth in chapter XV. In his note, appended to the report of the Commission, Mr. Dampier takes this objection to this procedure that, while it has been framed "to provide a special means for the landlords to overcome the resistance which is offered by combinations of ryots" against enhancement, it may be perverted from this object to procuring enhancements in individual cases. With a view therefore to preventing the procedure from being utilized by zemindars in cases of individual ryots, Mr. Dampier would place in the hands of Government the power of determining in what cases a landlord may set the Collector in motion under this chapter, and in what cases he should be restricted from doing so and compelled to proceed in the civil court.

38 If I be not venturesome in criticising the opinion of the President of the Rent Commission, I would say, that Mr. Dampier seems to me to unduly restrict the aim and objects of this new procedure. Looking as a whole at the discussion in Committee, the report, the Bill, and the current opinion which for years has been leading up to the present measures, I would prefer to say that this new procedure should be deemed to be framed as much in the interest of the tenant as in the interest of the landlord. If it be the interest of the landlord to enhance, under a speedy procedure, it is to the interest of the tenant and of the Government of this country that some degree of fixity or *quasi*-finality should be attached to the rate up to which enhancement may be had. It would be an excellent thing if all over the country tables of rates could be at once established, and as the wish of the landlord to enhance in an individual instance would directly lead to the determination of such a table of rates for the whole village, I would do nothing to impede that consummation. But when the table of rates was once established authoritatively. I would then leave it to the landlord to enforce it in the civil court, and this is what the Bill has done in its 106th section, see also paragraphs 78-9 of the report.

39. The procedure (sections 101-106) to obtain a table of rates seems to me as well-suited for the purpose aimed at as the purpose is in itself admirable. Perhaps the reference to the Commissioner or the Board of Revenue, secured by section 103, is unnecessary. It would be sufficient to reserve to either party the power of appeal. There may be instances in which no appeal would be presented, and it seems needless to delay the conclusion of the proceedings, in these instances, by a submission of the award for the Commissioner's approval. The right of revision, inherent in the office of Commissioner, secures all that is needed to subject the Collector to effective control.

40. The success of these excellent provisions will depend on the manner in which they are carried into effect. Rules for effectuating them will afterwards be framed, and doubtless criticisms on those rules will be invited before the rules are promulgated. Here I would only say that even if "simultaneous demands on Government for agency to carry the principle into effect" be made, and even if with the present district staff those "demands prove embarrassing and impossible to comply with promptly," as Mr. Dampier fears, these are, I respectfully submit, adequate reasons for enlarging the district staff, not for minimising the effect of a principle fraught with so much good to the people at large.

41. The provisions for obtaining an enhanced jummabundi preclude any appeal by either landlord or ryot to regular suit in the civil court. The order of the Collector, after confirmation by the Commissioner, becomes final and binding on both parties for ten years.

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I confess that this ademption of the jurisdiction of the civil courts in this matter does not seem to me altogether wise. While I believe that the Collector is better fitted and has more opportunity for ascertaining what enhancement the lands can afford, I do not think he is so well fitted for determining questions of law and evidence, such as whether an individual holder of the land should be called on to pay that enhanced rent. Give to the Collector the determination of what enhanced rent is fairly assessable, and to the civil court whether A and B have any valid legal reasons to show why they should not pay that rent. You will thus have a distribution of labour, and you will be utilizing your instruments to the greatest advantage, availing yourself of the special capacities of each. As the sections now stand, a Collector has to do two distinct things. He has (1) to ascertain what enhanced rent the land will fairly bear—(2) he has to see whether the ryot has any valid reason, such as a claim to hold at lower rates on agreement, for not paying these rates. Now, the determination of the validity of such reasons is peculiarly the province of the civil court, and if you lump it up with the first duty, you may have more expeditious, but you will not have better work than if there were a division of labour.

42. It is certain that orders enhancing rent will be contested as far as the law gives the right of appeal. If the Collector have the giving of these orders, the appeal will lie to the Commissioner, and thus you will have the litigation of seven districts concentrated at Patna and overwhelming the Commissioner. Now, that would result in enormous costs to ryots, who would have to leave their homes and go to Patna. It would necessitate not one but several assistants to the Commissioner—men of standing whose orders could command respect. This would be the result, while all the time you have able District Judges near the people's homes, whose orders on such cases carry weight and might be made final.

I instance Patna for the sake of my argument, but the same results would happen in every division.

43. In case the ryots or any of them agree to the enhanced jummabundi, their agreement might be recorded by the Collector and declared to be final and binding on them. In case of recusant ryots, if it be thought inadvisable to let the landlord move the civil court, a modification of the procedure now observed in land acquisition proceedings, when the Collector's award is not accepted, might be followed. The Collector might fix the enhanced rent, and refer the cases of ryots who object to it to the civil court for decision. Of course the Collector's approved finding on the question of *enhanced rates* would be conclusive evidence for the civil court on that point.

44. As far as the question of expense is concerned, the stamp fees chargeable on instituting the case in the Collector's court might be made to carry it through the civil court, the proceedings being continuous in the case of an enhanced jummabundi or a settlement jummabundi.

45. On the subject of the general provisions (sections 115-131) which follow, I have not many observations to make. I consider the liberty accorded to the Collector by section 116 to bring about binding amicable compromises, capable of bearing excellent fruit, but action under the section will have to be carefully and judiciously exercised. For instance, the word of a jeyt ryot must not be taken as binding other ryots, as I have known it to be done. That, however, is a question of practice. The principle is good.

46. I consider the discretional power to give costs against ryots, which is provided for by section 128, should be sparingly exercised, but in some cases it may be very necessary. I wish the same discretional power was reserved in regard to awarding interest on arrears of rent. The award of 12 per cent. interest by section 56 seems to me unnecessarily imperative.

47. I have already observed that I consider the provisions of section 131 a powerful means of counteracting abuses. It is the fitting and necessary complement of the preceding sections, and the whole chapter modified, as it doubtless will be, in detail, but with principles unmodified, will furnish noble testimony to the humanity and ability of its formers, and if properly worked, should introduce an era of tranquillity and agricultural progress in this province.

48. I now proceed to make a few observations on the subject of bhoali tenures.

The Bill could not have prohibited such rents altogether, but it ought, I think, to have done nothing to instil vitality into a thoroughly bad system. It has been said the system has its uses, and that the ryots in South Behar like it. Its uses are mere make-shifts, and the liking of the people in South Behar for it is the liking for laziness, engendered by a lazy system of cultivation. As long as such a rent system prevails in South Behar, we may hope in vain for any improvement in the condition of the people there. There is no incentive to exertion, save the immoral incentive of being able to defraud the landlord of a portion of his share. Section 84 of the Bill seeks to lessen the immorality innate in this part of the system, by making it possible to have the distribution or appraisement made by the Collector. The section, if workable, which is doubtful, will doubtless mitigate the worst evils, but if it tends to prolong the life of the system, I think it in the nature of ill-advised kindness.

49. Under the bhaoli system, the landlord, when strong enough, appropriates in good years a far larger share of the produce than he could buy with the money rent of land of similar situation and fertility. This is undisputable, while he supplies nothing but the land, and, in parts of Gya, some facilities for irrigation. These irrigation embankments, maintained not always in good repair, are appealed to by the advocates of the bhaoli tenures,

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as something peculiar, raising the Gya land system to a level with the metayer system of Continental Europe. My answer is, that the question at issue, is the comparative advantages of nukdi and bhaoli rents, and that under the *nukdi* rent system, zemindars are often bound by custom to maintain similar embankments. They do so in some parts of Sarun, and they would do so in Gya, no less under money rents than under rents in kind.

Returning to the consideration of the nature and effects of bhaoli tenures, I wish to point out that in bad years, even without the security which the rise in prices caused by bad years imparts, the landlord's share of the produce exceeds the money rent such land would pay. Let any one look through the estimate of crop outturn in South Behar in bad years, and then examine the prices current of those years, as I have done—he will find that this is so. He will find that the landlord, without running any risks of the partnership (for it is not a rent system at all), is saved from loss in bad years, while in good ones he appropriates so much of the produce that the ryot is never able to provide against years of crop failure from the outturn of good years.

50. This bhaoli system has its proper place in rural economy, as an appendage of the money rent system. As such, we find it in advanced districts, and in such cases it needs no legislation. What I would like to see in this Bill, in regard to so-called bhaoli rents is this, that, as they cannot be abolished by a stroke of the pen, as the people must grow out of them, nothing should be done to lessen the hardships of the system, while every facility should be given to either party to escape from those hardships to the money rent system.

51. Those facilities are not, in my belief, provided sufficiently by section 86, &c., of the Bill. On a first cursory reading of the Bill, I thought these provisions adequate. Now I believe that to fix the money rents at the average gross value of the landlord's share of the produce, minus the vague and indefinable deduction referred to in the penultimate sentence of the section, would be to beggar every ryot who sought to bring himself under the money rent system.

52. In section 23, clause (*c*) of the Bill, the maximum of enhancement of money rents is fixed variously at $\frac{1}{4}$ or $\frac{3}{16}$ of the average annual value of the gross produce. The theoretical share of landlords in South Behar is $\frac{2}{16}$ of the produce. Say their average share is one half. It is not, then, too much to say that, if this section 86 stand unmodified, a Gya ryot, seeking to bring himself under the money rent system, would never get his rent fixed by the decree at a rate lower than the highest rate which a landlord in other districts can obtain. You will make the Gya ryots, said to be the poorest in Behar, pay a larger proportionate share of the produce than the richest ryots in the province can be called on to pay.

53. The phrase "reasonable deduction" in the penultimate sentence of section 86 of the Bill is altogether too vague and indeterminate, and its retention will neutralize the entire effect of this important part of the Bill. The varying interpretations and applications of the phrase to facts will be inumerable. Therefore I advocate its being expunged from the Bill, and a definite hard-and-fast rule laid down, as is laid down in section 23, and modified as I have recommended that section should be modified. For South Behar, the maximum money rent which a landlord should be entitled to claim, should not be calculated on the value of his theoretic share of the produce, which share he does not always get, and which, even if he does get it, costs him a good deal before he can convert it into cash. The only equitable rule, in my opinion, is to make the commutation on the basis of money rates. If no such rates are found in the nearest villages, they will be found somewhere else in the district.

54. There is now only one other point in connection with the Behar special provisions (namely, section 82 of the Bill) to which I may allude. In paragraph 152 of the report, the Commission theorize on the question of interchange of land, and the suggestion they make is that this interchange forms a feature in agricultural life in Behar in the present day. This is a mistake, and the President was well-justified ni dissenting from the theory. If the section 82 had no applicability, save to interchange of lands between ryots, I would not have thought it worth while to object to it—it would have remained a harmless excrescence on the Bill. It is because of its special application to the abuses of the present system of cultivating indigo, that I think it right to notice it.

55. As indigo cultivation is at present carried on, the planter, on taking the lease of a village, enters on a portion of the village lands, thereby reducing the area of the ryots' holding. The lands so taken up are often exchanged for other lands when the former become unfit for indigo. Land taken from A may thus be given to B, and so on. The effect of section 82 of the Bill will then be to confirm B's right in lands, which ought to have been returned to A by the planter.

56. I desire to be clear on this point. The provision for exchange of lands is not, as far as I have ever seen, called for by the people of this province. It is the outcome of a well-intentioned, though feeble, effort to mitigate some of the abuses of indigo-planting. It will, if carried into effect, be legalizing the robbing of Peter to pay Paul. The true remedy is to treat, as criminal trespass, any occupation of a ryot's land without the ryot's consent. Do this, as the present law enables you, and the ryot's consent will be obtained, his lien on the land maintained, and no shadow of necessity for such a provision as this will exist. Give the ryot a right of occupancy with the right to sublet, (under the qualifications I will presently mention) you thus solve the difficulty by enabling planter and ryot to contract, and insisting on a contract being made or no land exchanged.

57. In the preceding pages, I have striven in a more or less connected way to place before you the views I hold on the more salient provisions of the Bill as it refers to Behar. There are other provisions which did not fall naturally within the course of my criticisms, but to which I wish to refer before I bring this letter to an end.

58. The first of these is the uncertain recognition, by the illustration to section 4 of the Bill, of an occupancy ryot's right to sublet. On this question, which, for the Behar indigo districts, is of importance, the Commissioners seem to have vacillated greatly. At their 18th meeting, they adopted in a hesitating form the principle of the occupancy ryot's right to sublet, in their 22nd meeting they affirmed that principle boldly, and in their 38th meeting they emasculated their previous decisions. I think it a very unwise thing to keep open such a battle-field for litigants, as doubt on this question will prove. The undercurrent of uncertainty and disagreement between the decisions arrived at in Committee, the definition of under-ryot in section 3, and the provisions of section 4, it is most desirable to clear up. I strongly recommend therefore that the occupancy ryot's right to sublet be recognized formally. The inclination of the Commissioners was evidently this way, and the circumstances of the country demand an affirmative declaration on the point.

59. Next arises the momentous question—if the occupancy ryot should sublet—shall the "under-ryot" be declared capable of acquiring a right of occupancy or not? The Bill (clause (*c*), explanation 3, section 19) says *yes*, but with all due repect I would venture to say *no*. I would limit the occupancy ryot's right to sublet to a term of years. I have read attentively the discussions on this matter, held at the 22nd meeting of the Commission, and I find most of the arguments on both sides of the question fully developed there. One objection, however, I do not find, namely, that if under tenants may acquire occupancy rights, the landlord's right of choice (acknowledged elsewhere in chapter V of the Bill), as to whom in the future he may allow such rights to accrue, is virtually annulled. If an occupancy ryot may allow his "under-ryot" to acquire occupancy rights, what relevancy, as far as the landlord is concerned, has chapter V to his estate? If an occupancy right is transferred by sale, the fact of purchase assures the landlord of the solidarity of the holding, of the in-coming tenant's solvency, and indirectly of his character. If the right is transferred by gift, or inherited, some one of the family of the former holder probably succeeds, and there is some security. But there is no such assurance in case of a squatter, admitted without the landlord's knowledge or consent, to occupancy rights in a small plot of land—part it may be of that original holding, to which the landlord may have admitted the right to attach. I need not follow up this train of reasoning to its ultimate development of rack-rents becoming occupancy rates, and furnishing thereby a basis for enhancing other lower occupancy rates, of sub-infeudation, and of disintegration of holdings. All these results were present to the minds of the Commission, but they thought they could avoid them by imposing a legal maximum on rents (*vide* page 253 of the Discussions, and section 35 of the Bill).

60. In my opinion, the difficulty might be solved in a simpler manner, and, with all respect for Mr. Mackenzie's opinion, in a way more in accordance with the existing customs of this province at least. The question is, shall under-ryots be allowed to acquire rights of occupancy at the will, not of the landlord but of the occupancy ryot? It is admitted that allowing under-ryots to acquire such rights opens the gates to a flood of consequential difficulties. I say, then, do not open the gates at all. Adhere to existing customs which, if I be allowed the familiar expression, are "racy of the soil" which deny to the *shikme assami* or *peta ka assami*, as such (korfa is a Bengali term), the capacity to acquire any occupancy rights. Inasmuch, however, as it is desirable to secure to this "shikmi assami" or "under-ryot" some sort of fixity of tenure, enable him to obtain a nine-year lease. This will be a compromise, which, while avoiding a course fraught with difficulties and new to the country, will still improve the position of the class in question. We may hope that with the new facilities for obtaining occupancy rights, the 'under-ryots' will be few, and those mostly paikust. The occupancy rights and pergunnah rates provisions will secure to the mass a prosperity not known to them hitherto—let time do the rest.

61. The next point I have to notice is the provision (section 210) that the sale of tenures and occupancy rights for arrears of rent shall void all such leases. To this provision I object on general grounds, and on the special ground that it will help to block up what I conceive to be the true road towards reform in the indigo system. The provisions seems to have been borrowed from the Patni Sale Law, Regulation VIII of 1819. If along with the substance of section XI of that Regulation, the substance of section XIII had also been borrowed, I should have no objection to make. A power would there be reserved to undertenure-holders or sub-lessees to protect their interests without hurt to the interests of the superior landlord. As the section at present stands in the Bill, it is a premium on the continuance of the thikadari system in indigo-planting. No zemindar will willingly allow his ryots to deal direct with planters, and so intercept the profits which the landlord now monopolizes. If a planter, by laying down a salami, and by promise of a good rent, does succeed in getting land on lease from an occupancy ryot, the zemindar will, under this provision, have it in his power, in collusion with the ryot, to oust the planter, who would then lose both premium and land. Theorists may say that the self-interest of the ryot will preclude the possibility of such a consummation as this. It is reliance on theory and disregard of the nature and customs of the people we have to deal with that shipwrecks many good laws and secures for many others a still-born birth.

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52. The next point I have to call attention to is the provision (section 77) which lays down rules for the use a ryot may make of his holding. This is a section in regard to which zemindars have expressed much repugnance. Now, I think that mention of all these matters, the right to build dwelling-houses, to plant trees, to dig wells, might, with advantage, be excluded from the Bill altogether. They are matters which are better provided for by prescription and custom than by specific rules of law. New houses will, as a rule, be built contiguous to old houses on the village "deh" (Bengali "bustee")—not on the culturable land, why then run counter to the landlord's wishes unnecessarily, by declaring a ryot has a right which he will seldom exercise? The formation of new tolahs shows that when it is necessary to build away from the original village, permission is not withheld.

In regard to trees, the custom in Behar varies. In certain localities, the landlord's claim to a share in trees planted by the ryots is uncontested—in other localities, with which I am acquainted, the ryot is sole owner of the trees he plants, and may cut them down without any reference to the landlord. I have not had any reason to believe that the existing practice in this regard has been productive of hardship, and I would therefore allow the matter to be ruled as heretofore by local custom.

Lastly, in regard to tanks and wells, it would be a distinct injury to the zemindar if the ryot were to be allowed to excavate tanks at his discretion, while it would be no less an injury to the ryot if he were restricted in digging wells. And in the Sarun district, at all events, this distinction obtains in practice. If legislation on the subject is to be had, and I deprecate it as unnecessary, this distinction should be preserved in the enactment

These are the remarks which the leisure at my disposal enables me to offer on this most important measure. I am of the belief that the central idea, to which all other provisions in the measure are subordinate, is the concession to resident ryots of occupancy rights. If that idea be not effectuated, I do not expect any special good from the other provisions. They are merely subsidiary. I have gone among the people of this province constantly for several years. I have striven to inform myself on the subjects of their past history and their present condition—I believe myself therefore competent to offer an opinion on this question. My opinion is that the acknowledgment of the possession by resident ryots of occupancy rights would be for the most part a recognition of actual facts, and but in a small part a concession of a new privilege. I do not say that the "three Fs" are needed to place the Behar land system on a sound footing, because the unlimited right of free sale is at present uncalled for, but fixity of tenure and fair rents, are absolutely essential to the well-being of the Behar ryot—to the prosperity and contentment of this province.

J E. S.—Reg. Nos 13682 to 13687J.—140—24-8-81.

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NOTES ON SOME RENT QUESTIONS IN BEHAR.

PART I.—OCCUPANCY RIGHTS.

UNDOUBTEDLY enhancement is by far the most important of all the branches of the Behar rent question, but it seems most convenient to take up first the subject of occupancy rights, for it may be possible in writing on this subject to bring out clearly the fact that, in order to protect the Behar cultivator, it will not be enough merely to alter the existing law, but that it will be equally necessary to take care that the law be not frustrated by defects in the administration, whether executive or judicial.

2. There has been much difference of opinion about the nature and extent of occupancy rights in Behar, and some observers have gone so far as to deny the general existence of such a right, or to assert that, if it ever did exist, it has been almost everywhere destroyed by the action of the landlords. The conclusions I have come to after three years anxious study of the subject are diametrically opposite. I hold that the vast majority of ryots in Behar have at the present moment strong occupancy rights in the land which they cultivate: that these rights are based in the first instance on the living custom of the country, a custom which no court of law could ignore if it was properly pleaded before it: that these rights have been confirmed under the statute law, owing to the ryots having held and cultivated the same lands for more than twelve years, and that these facts are acknowledged by every honest landlord, and even by dishonest ones, when it suits their purpose. I freely acknowledge that this right has been in many cases destroyed by the illegal action of the zemindars, most often acting through thikadars, whether European or Native; that great sweeps of land once held by ryots with rights of occupancy have been turned into indigo zeraats; that lands have been arbitrarily taken from one ryot and given to another; that holdings have been changed at the pleasure of the zemindar, and that decisions have been obtained from the civil courts declaring that no right of occupancy exists in lands which I hold to be really subject to such rights. But all this probably does not affect one-tenth, certainly not one-fourth, of the land of the Province, and in all the rest I unhesitatingly say that occupancy rights are the rule. The fact that landlords have been able to destroy these rights in individual cases no more proves that these rights do not exist than the present state of Ireland proves that there is no law in that country against murder, or grievous hurt, or intimidation. This view about occupancy rights is not peculiar to myself. It is held by Messrs. MacDonnell and Finucane, and perhaps more strongly by Mr. Worsley, each of whom has told me, when I broached the view as a discovery of my own, that he had long held similar opinions.

3. At the time of my coming to Behar, I had no suspicion of the existence of any general occupancy right beyond that created by Act X of 1859, which I had always been told had been defeated by the action of the landlords in changing holdings. My work in Shahabad gradually taught me that there was a customary right acknowledged by the landlord when it suited him, and stoutly held to by the ryots. The first time I heard of this from a landlord was in the course of a butwarrah case, in which the dispute turned upon the apportionment of lands in which the ryots acknowledged that no occupancy rights existed, and in the dispute the landlords allowed that in the rest of the lands (by far the greater portion) rights of occupancy did actually exist according to village custom. The ryots had no knowledge of, and made no claim under, Act X or Act VIII, and did not assert that they held on the guzushta or tenure at fixed rates peculiar to Shahabad. Further enquiries shewed me that this was a typical case, and that an occupancy right does really exist throughout the greater part of the district. They also shewed that there has been little change of holdings, and that the mass of the ryots hold the lands which their fathers held before them. This is the case in every part of Gya about which I have been able to get information, and it is equally true of bhaoli and nugdi lands. The Manager of the Maharajah of Hutwah has

distinctly told me that in the Hutwah estates the occupancy rights of old cultivators are recognized, and that it would be contrary to custom to interfere with them. There is the same feeling in this district*; and I have been told by ryots that landlords could not legally raise the rates except in lands abandoned by the ryots. It may be well to remark here that the case of the Beheea landlords, quoted by Mr. Reynolds, which appears to tell against my view, is an exceptional one. I believe that the leases, with a special clause providing against a right of occupancy, are either for reclaimed jungle in which Messrs. Burrows, Thomson and Mylne had settled ryots with a clear understanding that they were to have no occupancy rights, or for lands previously held by ryots who had rebelled with Kooer Singh, and who were afraid to claim them after the mutiny. Such lands are treated by Messrs. Thomson and Mylne on the same principle as the jungle lands, but they have assured me that they recognize and do not interfere with the right of occupancy where it still exists. It seems to me very unlikely that they would attempt to guard against its ripening under the statute law when they know it already to exist by custom. I feel sure therefore that their statement to Mr. Reynolds must be understood as referring only to leases given to ryots settled by themselves on lands unoccupied at the time of settlement.

4. If it be certain, as I believe it is, that an occupancy right does exist throughout Behar, and that both landlord and ryot are fully aware of its existence, the question arises—How comes it that the landlord has in so many cases been able to destroy the right without the ryot being able to resist? My answer is that the agency employed has been in most cases the thikadar, and that he has only been able to effect his purpose through defects in our administration. I believe that in large estates the danger of interfering with the ryots' rights, and so setting the mass of the ryots against the landlord, would have deterred him in most instances from directly taking the measures the temporary thikadar was able to take without the same risk, and that in both large and small estates landlords were formerly under restraints of public opinion, and possibly of conscience, from which the thikadar was generally free. Consequently, the sole protection the ryot has had against the thikadar has been what he has been able to obtain either from the executive authorities or from the courts of law, and this protection has been too often wanting, owing not to any weakness in the legal position of the cultivator, or to any insufficiency of the law, but to defects in its administration. I am convinced that, if the police and the criminal courts had consistently done their duty during the last twenty years, there would now be no question about the existence of occupancy rights in Behar, and we should be free from many of the difficulties which we have to face at present. The cultivating classes of Behar are in quite a remarkable degree amenable to the authority of Government, and this authority has come to be represented in the minds of the mass of the people almost exclusively by the police. Now for years back almost all the power of the police has been practically at the disposal of the landlords in their disputes with their ryots. The police authorities have either overlooked the complaints of the ryots against their landlords, or they have actually helped the landlords by measures taken to prevent breaches of the peace. As a rule, the ryot finding the police against him, did not go further for aid; but if he went into the criminal court, the chances were that he was referred to the civil court for redress, and this was really tantamount in most cases to denying him any redress whatever. Officers like Messrs. Worsley and MacDonnell have within the last few years done much to remedy these evils in some of the Behar districts, but in other districts they are still unchecked, and I think that there are defects in the composition of both the police and the subordinate criminal establishments of Behar which hamper the action of even the ablest and most energetic district officers. I have observed instances of the evil effects of police action in every district of Behar, but I am now unable to give the details of such cases from memory, and am therefore compelled to instance as examples two cases which have come to my notice since I joined this district.

5. The facts of one case are as follow. About last September, the thikadar of a village named Tajpore, situated less than two miles from a police station, gave a sub-lease of a portion of the village to a neighbouring factory. The lands

* Chumparun.

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were undoubtedly held by hereditary cultivators, all of whom have statutory rights of occupancy under Act VIII of 1869. But the sub-lease contained a clause authorizing the factory to convert the lands into zeraat for indigo purposes. Acting on this, the servants of the factory entered on the lands and ploughed them up, destroying the demarcations between the fields. The cultivators complained at the police station, but no notice was taken of their complaint, and the matter was not reported to the Magistrate. The matter came to my notice accidentally while in court. When I went to the place, I found that there could be no doubt whatever of the facts, and the only defence the factory servants could make was that the cultivators had willingly given up the lands taken on being allowed to retain the rest of their holdings. It was perfectly clear that the ryots had never consented, and had made no active resistance to the illegal acts of the factory, only because they found that the police would not protect them.

6. In another case a planter who had recently obtained a lease of a village had a dispute with the ryots about the crops of some land which he claimed as the zeraat of the proprietor from whom he had taken the lease, and he applied to the sub-divisional officer to depute two constables to the village to keep the peace, their pay to be defrayed by the factory. The sub-divisional officer asked the District Superintendent to send the constables, without intending that they should be paid by the factory, as he now states. The money was, however, deposited, and the matter was not reported to the Magistrate of the district till after my arrival. I then telegraphed to Bettiah to have the constables at once withdrawn, and called for full report. It turns out that on further enquiry the sub-divisional officer found it necessary to call upon the planter to show cause why he should not be bound down to keep the peace, and that he only withdrew the summons on getting a written engagement that the factory would not interfere with the lands in dispute without a legal order. Now, there can be no doubt that the sub-divisional officer had no intention of favouring the factory, but in this case his dread of the possibility of a riot blinded him to the advantage his action was likely to give to one of the parties in the dispute. This leads me to point out that the pressure put upon police officers to prevent the occurrence of breaches of the peace has a tendency to make them take action which in most cases of dispute between landlords and ryots gives the former an advantage. It is a common practice, when the existence of a dispute becomes known at a police station, to send out constables to prevent a disturbance, without taking any notice of the frequently illegal acts which are the origin of the dispute. The ryots who in such cases are generally the aggrieved parties have no option left but to yield and make the best terms they can with the landlord or thikadar. But to return to the question of occupancy rights: if in all cases of forcible dispossession the police were to proceed against the offenders as guilty of criminal trespass, landlords or thikadars would have to go into the civil court to eject ryots claiming occupancy rights, and I think it certain that it would be soon found that the majority of ryots actually possess these. On the other hand, I do not think that there will be much use in any further legislation on the subject, unless means are taken to protect the ryots by good administration of the law. At the same time such a measure as that proposed in Mr. Reynolds' note, for defining what lands are zeraat and what assamiwar, would be a great help to administrators in various ways.

7. I think that the proposed definition of zeraat is too wide. It certainly goes much further than I contemplated in making the proposal to have zeraats registered. I meant to suggest that we should accept as zeraats all lands now undoubtedly held as zeraat without any serious dispute to their being so held. Thus I would recognize as zeraats all lands shown as such in butwarrah papers or other records in the Collector's office, all lands recognized as zeraat by village custom, and all lands which could be proved to have been occupied as zeraat, say for twelve years previous to the passing of the Act, whether cultivated by the proprietor or held by some one under him. But I should most certainly object to allowing lands to be registered as zeraat, merely because they might be occupied as such at the time of the passing of the Act. Such a provision would inevitably lead to a great struggle to get possession of as much land as possible, and to add it to existing zeraats before the passing of the Act, and there would be endless

repetitions of the Tajpore case, more perhaps than we could successfully cope with.

8. If this were guarded against, I do not think that there would be any practical difficulty in registering the existing zeraats. The district establishments would need strengthening, and the Collector of each district, or a very trustworthy subordinate, would have to devote the whole of one cold season almost exclusively to superintending the work; but I do not think that any special machinery would be needed.

9. I feel more doubt about the practicability of registering what Mr. Reynolds terms "common lands." There would be little difficulty about deara lands formed by alluvial action within living memory, or about tracts of forest or jungle, or uncultivated waste, such as are to be found in this district, in Gya, and in Shahabad; but great difficulty would be felt in dealing with true common lands, such as once perhaps existed in every village, and which are still to be found in many places. I certainly should never assent to zemindars being allowed to turn these into zeraat by cultivating them for twelve years, and I should be rather inclined to form a fourth class for them, placing restrictions on their exclusive use by any one. But I have not yet satisfied myself about this question. Mr. Reynolds' proposals about the remainder of the lands do not differ materially from my own suggestions.

10. I hold most strongly that, when once we have ascertained what lands are actually now assamiwar, we should declare that the right of occupancy is attached to those lands and possessed by the actual cultivator, except in certain cases where I would allow a ryot to sub-let or to alienate in other ways his right to cultivate without forfeiting his right of occupancy. I would allow this limited sub letting to provide for the cases of children left fatherless while too young to cultivate the land; for people absenting themselves from home for a short space on pilgrimage, and the like; and, I am much disposed to add, for those wishing to emigrate to the tea districts or the colonies. I have not been able to discuss the point with other district officers, and merely throw out the suggestion now for further consideration. If the right of occupancy were confined to the actual cultivator, the objections made to the transferability of the right, on the ground that it would lead to the transfer of holdings to indigo planters and mahajuns, would disappear. Of course a difficulty would arise about the definition of an actual cultivator, for it must allow for the employment of hired labour to help in the cultivation, and at the same time exclude all persons carrying on the work of cultivation entirely through the agency of others; but I do not think the difficulty insuperable. As a matter of fact, there is never any doubt whether a man does or does not cultivate his holding, and I do not see why we should be unable to make a definition to meet a condition so clearly marked. It would be necessary to make a clear provision for the protection of the holders of such lands as the guzushta holdings in Shahabad, and perhaps the best way would be to declare them to be tenures when not cultivated by the guzushtidar himself, and to give the actual cultivator occupancy rights in them. All these are really minor difficulties, and they may be made far too much of.

11. After all has been said, there remains the great fact that, out of the cultivated land in Behar, by far the greater portion may be sharply divided off into zeraats in the exclusive possession of the landlord, and assamiwar lands held by hereditary cultivators with occupancy rights under immemorial custom. These rights have been destroyed in many cases by illegal means, in comparatively few through the defects of our civil courts; but I once more emphatically assert they still exist in by far the greater part of the lands of the Province, and a law defining them, and providing for their protection, would not effect any great change in the actual state of things. What it would do, if properly administered, would be to prevent the further illegal encroachments of the landlords; but I must again repeat that what we chiefly want is improved administration—all changes in the law must be fruitless without this.

12. I may now take up the proposal with which Mr. Reynolds' note concludes. I agree with his proposal to recognize different classes of lands, but I differ on some points:—

I.—I consider his proposed definition of zeraat lands to be too wide.

II.—I consider that the right of occupancy should be conclusively presumed to exist in the actual cultivator of ryotee lands, except in certain cases to be clearly specified in the law.

III.—I agree with his proposals for (C) lands in the cases of recently formed dearas and uncultivated wastes, but disagree in the case of common lands of villages.

13. I would not make any provision to debar the acquisition of occupancy rights by planters. I have no remarks to make on the remaining proposals, which I generally accept. The last, *i.e.*, allowing a right of pre-emption, perhaps would not be necessary if the right of occupancy were restricted to the actual cultivator: still I think it might be found useful. I had practical experience of its working in Cachar, where it was, I may say, introduced by me, and I found it work well among the peasant proprietors of that district. I do not wish to give a decided opinion upon the question of taking the inheritance of occupancy holdings out of the operation of the Mitakshara law. As a matter of fact, I do not think that any difficulty is felt at present. I have never heard complaints of guzushta holdings being split up, and all unprivileged holdings are now passed from father to son. It seems possible that any limitation of the succession might have a tendency to weaken the family tie, which is not desirable. But I confess I have not studied this question carefully, and I should be willing to accept the conclusion of Mr. MacDonnell and Mr. Finucane if they both disagreed from me.

PART II.—ENHANCEMENT.

I have very little to add to Mr. Reynolds' note on enhancement of the 11th December, with every word of which I fully agree. It cannot be too often repeated that the great evil of the past in Behar has been constant enhancement of rent, and that this is the great danger of the future. The figures given by Mr Reynolds from the road cess papers are sufficiently startling in themselves, but even they do not clearly show the extent of the rack-renting evil in Behar. Mr. Reynolds has pointed out that Sarun is held to be under-assessed in the road cess valuation. Mozufferpore is still more so. This is the opinion of Mr. Worsley, under whom the assessment was made, and it is confirmed by strong outside evidence. There are probably a thousand square miles of waste land yielding no rent whatever in Shahabad, and a similar amount in Gya. There is a much greater proportion of uncultivated waste in Chumparun, where the incidence of the rent on the cultivated area probably amounts to Rs. 1,200 a square mile. This I take to be far higher than that obtaining in any similarly circumstanced district in Bengal, but it does not really represent all that the landlord gets for the land. A very large proportion of the district is let out in thika to indigo planters who have lent enormous sums to the landlords at a lower rate of interest than they actually pay themselves for the money. The factories recoup themselves for this, not in increased rent, but in indigo undoubtedly grown at a loss to the cultivator. Besides all this, the road cess returns are from six to eight years old, and the enhancement screw has been at work since. The Durbhunga case is an illustration of this. The road cess valuation was Rs. 1,922 the square mile. This was undoubtedly under the mark; yet we find the new settlement of the Durbhunga estates giving an increase of 22 per cent in one pergunnah, and 11 per cent in another. Now we must never lose sight of the facts that these returns show average rates over the whole of a district, and that they are calculated not only upon lands which pay no rent whatever, but also on the land of cultivators holding at privileged rates. All this goes to increase the rates imposed on the great mass of the cultivators; and I believe that these rates amount in many cases not merely to a rack-rent, but to a rent which can only be fully paid in prosperous years. This is the secret of the tremendous arrears on almost every estate in Behar, and of the bad collections of the Wards' Department. The jummabundis show impossible rents. In a bad or even an average year the landlord collects all he can, and carries on the balance as an arrear, a portion of which may be screwed out of the ryot in a year of exceptional prosperity, and which can always be held *in terrorem*

over him in case of his turning refractory. This state of things is so serious that, if there were no hope of its improving of itself, it would be the duty of Government to step in and take such measures as might be necessary to reduce the present rents. But I think that, if further general enhancement were effectually stopped for the next few years, the improvement, of which there are clear signs, in the value of the produce would make present rents fair, and the respite would probably so raise the condition of the ryot as to enable him to hold his own without special help in the future. I believe therefore that really the wisest course for Government to take would be the bold one of prohibiting all enhancement on any ground, or in any way whatever, say for the next thirty years.

2. Failing this measure, which I confess I do not venture to recommend, we should undoubtedly fence enhancement round with the severest restrictions possible. The first, and immeasurably the most important of these, is to prevent enhancement by thikadars. I think therefore that the proposal to limit the right to persons having a permanent interest in the land a very good one, so far as it goes. But it would also be necessary to provide that no thikadar should under any circumstances collect a higher rent than that actually paid for, say, the two years previous to the commencement of his lease. In the case of thikadars, I would even bar enhancement with the consent of the ryot. The thikadar should only be allowed to take land with a fixed and well ascertained rent-roll, the rates of which have been previously established, and he should not be allowed to alter that rent-roll or those rates during the currency of the lease. I do not think I would allow even the landlord to enhance except under an order of court, or with the duly registered consent in writing of *every* ryot in the land affected by the enhancement. I would require the consent of every ryot because it is a favourite plan to get some ryots in a village to consent to the enhancement, and then to distrain the crops of the others for the enhanced rent, under colour of the consent given by the few won over. It would be necessary to make illegal enhancement highly penal, and to make it compulsory on the courts to inflict the penalty, as well as to award amends to the ryots. I am aware that the above propositions are perhaps startlingly drastic, but I am convinced that no half measures will suffice to remedy the evil.

3. I agree with the Rent Commission and Mr. Reynolds that in no case should enhancement be allowed above one-fourth of the annual value of the produce, calculated upon the price of staple crops. I do not clearly see, however, how the amount of the staple crops which could be grown on lands cultivated with other crops is to be estimated. But I do not understand generally how the Commissioners' proposals about tables of rates for staple crops would work, and consequently I do not feel justified in giving any decided opinion on the subject.

PART III.—CONVERSION OF BHAOLI TENURES.

I think that Mr. Halliday and myself form a minority of two on the bhaoli question, among Behar officers at least. But we are the only officers who have had any long or close experience of bhaoli as it prevails in Gya and South Shahabad. It is quite possible that the system in other parts has all the faults alleged against it, and no redeeming points; but in those parts it prevails in a comparatively small and unimportant fraction of the land, while it is the main tenure in Gya and South Shahabad. It is quite true that bhaoli is almost entirely confined to paddy, but it should be added that it is also almost entirely confined to lands on which only paddy can be grown, and to lands on which the paddy crop is always subject to risk of total failure on account of either too much or too little water. The former lands are those exposed to long-continued floods, and their cultivation is purely speculative, except where protected by bunds. No cultivator would pay a fixed rent for these lands, the crops on which might be destroyed for years running; but many are willing to take the risk of cultivating them, and to pay the landlord half the produce if it escapes the floods; for the outturn, when there is any, is great enough to cover the risk. Now I cannot see how the economic arguments against the metayer system apply to this arrangement. This cultivation must always be undertaken by the ryot in addition to that of land the return from

which is less risky. It cannot be his mainstay, and it certainly can have no connection with his depressed condition. But a far more important class of land is that liable to suffer from the failure of the rains in the early part of October. A very large proportion of the land in South Behar is in this condition. It can only grow paddy, of which, with a full water-supply, it yields magnificent crops, but it is practically dependent on artificial irrigation. The construction and success of the Sone Canal may be taken as sufficient proof of this. Before the making of the canal, and in places not commanded by it, the works necessary for this irrigation were and are constructed and kept up by the landlord, whose rents were and are dependent on them. It was out of the power of the ryots to construct these works, which are in many cases very extensive; and even if the ryots had the means, the difficulty of getting ryots of different villages to agree to work together would have been insuperable. The realization of rents in kind in proportion to the produce is the best security for these works being kept up by the landlord, and I am for this reason averse to doing anything to discourage the bhaoli system except within the range of the Sone Canal, and there I should content myself with giving the ryot power to convert his bhaoli into nugdi. But I am very strongly in favour of stringent measures to stop the abuses of the system. I should certainly presume that the rent did not exceed one-half the produce, and I should require very strong proof of an agreement to pay more, if any such agreement were alleged. I should provide severe penalties for the exaction of anything more than half the crop in the absence of such specific agreement; for I have found in Gya that 6, 8 and even 10 seers in the maund are taken in addition to the half share. I should make it a legal presumption that the cultivator in every case takes the straw and chaff.

2. I adhere to my proposal that, when a dispute about the valuation of the crop arises, the Collector should depute an officer whose duties would be to have the crop cut and threshed, to make over the straw and chaff to the ryot, to set apart a certain portion as the Government share to cover the cost of the proceedings, and to divide the remainder equally between the landlord and tenant. This would give fewer opportunities for dishonesty on the part of the Collector's agent than a valuation which, being necessarily a matter of opinion, would have to be left very much to the discretion of the valuer. Fraud in the actual division could as a rule be easily proved.

3. The landlord should not be allowed the power of commuting against the will of the tenant, but I have no objection to letting the latter commute against the will of the landlord. Mr. Reynolds' propositions for commutation are fair, and do not seem to call for further remark.

4. The foregoing observations are founded on my experience in South Behar. It is possible that the bhaoli tenure may be as mischievous in North Behar as it is considered by Mr. MacDonnell and other officers, but I am not qualified to give an opinion on this point. But it must be remembered that in North Behar the system is the exception, and cannot have any effect in the greater part of the four northern districts, while it is really an important element in the rural economy of South Behar.

PART IV.—DISTRAINT.

It is perhaps now needless for me to state in detail my reasons for strenuously opposing the abolition of distraint in Behar. But as the representatives of the planting interest have been and are strongly in favour of the abolition, it may be just as well to record what I believe would be the effect of the measure on indigo planters. I hold it to be certain that the first result of the abolition of distraint would be a general refusal on the part of the ryots to pay at least recently enhanced rents, and in many cases a refusal to pay any rents whatever. Now this would scarcely affect planters, whose primary object is not to realize rent, but to grow indigo, and who in many cases have to pay the ryots as the price of their indigo an amount nearly equal to the rent payable by the ryots. The result would be that landlords would get the rents due from the indigo thikas in full, and diminished or possibly no rents whatever from their remaining lands, and that the indigo planters would become masters of the situation. Instead of having to pay heavily for thikas as they do at present, they would be competed for as the only profitable tenants.

2. For my own part, I should like much to do away with distraint if I saw any chance of getting rid of it with safety or with justice to the landlords. But as I am convinced that this cannot be, the only course seems to be to aim at preventing its abuses, and the point on which I lay most stress is to make it impossible for it to be turned into an engine for enhancing rents. I think that Mr. Mackenzie's proposals would effect this if the civil courts in Behar were strengthened and made very much more numerous, and if it could be provided that the Moonsifs should be invariably men with some experience of Behar and some knowledge of the language and customs of the Province. I have not Mr. Mackenzie's draft Bill mentioned in his 19th paragraph with me here, but I think that some proof should be insisted on that the rates of rent for which distress might be applied had been actually paid for a previous year. I would most certainly declare that illegal distress, or distress without the authority of the court, amounted to criminal trespass, and insist on the police investigating every complaint made to them; and I would make certain that the penalties for making incorrect statements in applying to the court for a distress should be enforced in every case, and not allowed to be an empty threat, as so many of the penal provisions of the rent law are at present, in Behar at least. But all this is of little importance compared with the strengthening and multiplying of the civil courts, and I may add, unless they are very much improved in some respects. For, as I have mentioned in reports from time to time, the civil courts of Behar are sadly inefficient in the performance of functions analogous to those which it is now proposed to entrust to them. I have more than once pointed out that the subordinate courts of this Province have reached a very high standard in the actual trial of cases, that is in the actual work of recording and dealing with evidence, in ascertaining facts, and in applying the law to them when found: but that they are far from being equally efficient in what may be called administrative work, in all that has to be done before the actual hearing of cases, and in the execution of decrees. I cannot help thinking that it would be better to make the distraint work over to the Revenue authorities. The hands of the Collector must be strengthened, if we really mean to improve the administration of Behar; and if his staff is increased in the manner I should recommend, I think he could do the distraint work better than the civil court.

3. Whatever may be the agency selected for the work, the utmost care must be taken to prevent the crop suffering injury through delays in procedure. It will be the object of the landlord in many cases to obtain such delay when his aim in applying for distress is not to secure his rent, but to break down opposition to enhancement or disputes of his claim; on the other hand swift procedure will be equally necessary to protect the landlord when the ryot contemplates removing his crop to avoid the payment of rent altogether.

PART V.—THIKADARS AND INDIGO PLANTERS.

In the course of the foregoing note, I have made some suggestions for limiting the powers of thikadars and counteracting the evils of the leasing system. It is unnecessary for me to dwell on these evils. They have been described over and over again during the last ten years. I can only say that the result of my experience of Behar is a conviction that the descriptions have, if anything, been under-coloured. I am forced to say also that, as a rule, the indigo planter is in many respects the most oppressive, as he is certainly the most unpopular, of thikadars. A factory is much stronger than the most powerful native thikadar; it pays, as a rule, more for the lease, and it is obliged, in order to recoup itself for its outlay, to force the ryot to grow an unprofitable crop on lands selected by itself without reference to his convenience or wishes, and to supply labour at the time it may suit him least. It seems to me that it is absolutely useless to expect any radical improvement in indigo, so long as it is based on the thika system, and almost equally useless to expect any radical improvement in the land system of North Behar, so long as it is profitable for the factories to take thikas for the sake of growing indigo. The two evils act and re-act on one another, and the faults of one system help to bolster the other up. I should therefore attach little value to any rent law for Behar which did not so limit the powers of a thikadar and so hamper his powers as to make him a mere rent collector for the landlord, and prevent his being

able to use his position for other purposes. Our proposals with regard to occupancy rights and enhancement, if they were fully carried out, would do much to effect this. In addition to them, I would propose a provision that no thikadar should be allowed to collect any arrears of rent remaining due at the time of receiving his lease. There are old balances against most of the ryots in Behar. I have stated before how they generally come to accrue, and the landlord generally has not the slightest hope of recovering them ; but when a village is taken in thika by a factory, the planter rakes up these old balances, and worries the ryots either to pay them or to agree to grow a certain amount of indigo. I was told this by the Secretary to the Indigo Planters' Association as an explanation of the fact that villagers often subscribe large sums and pay them to the landlord as an inducement not "to write" their village into indigo. The explanation does not really cover the facts; for the subscriptions are made by well-to-do ryots sitting at privileged rates, who are probably not in arrears, while the balances are shown against the overburdened ryots of the lower castes; but the circumstances of the explanation being given without the Secretary being conscious how much the admissions told against the indigo system is in itself an indication of the unsatisfactory state of the system even after the reforms of recent years.

PART VI.—NECESSITY OF A SPECIAL LAW FOR BEHAR.

In the concluding paragraphs of his paper on enhancement, Mr. Reynolds urged strongly the desirability of passing a separate law for Behar. In this he is supported, so far as I know, by all officers with Behar experience.

2. The proposed law of the Rent Commission is an excellent one in many respects for Bengal, and I for one look forward with hope to an Act drafted on its main lines being passed at an early period. But I must say emphatically that we in Behar do not want many of the things which it contains, and that it does not contain some of the things which we want most urgently.

3. Besides this, it is clear that considerable delay must occur in the passing of any General Code for Bengal, while Behar cannot bear further delay, especially in the matters of enhancement and distraint.

4. The rise of price is leading on zemindars and thikadars to increase their jummabundis, and the ryots are being deprived of all the benefits of the good harvests of late years. There has been an unusually large outturn of indigo this year, and though prices are low, it has been decidedly a good season. This will lead to attempts to extend cultivation. If our proposals are accepted, there will be a struggle to secure all the advantages it may be possible to gain under the existing law before the passing of the new Act.

5. It may not be out of place for me to state here that the necessity for a large and speedy alteration of the law in Behar has been forced on me within a comparatively recent period, and to explain how this has happened. My first experience of a Behar district was Shahabad, where the people are as a rule more prosperous than in other parts of the Province, where they are much better able to hold their own against their landlords than elsewhere, and where there still exists a strong transferable tenure at fixed rates. Undoubtedly the condition of the ryots in some parts of the district is very bad, and I have often found it necessary to take strong measures to protect them from oppression,—sometimes with little success. Still, on the whole, I did not consider any immediate or large change in the law absolutely necessary for the protection of the Shahabad ryot. During the time I acted as Commissioner of Patna, I visited all the remaining districts, and lost no opportunity of enquiring about the state of the ryots in all. Everywhere I found a state of things differing widely from that prevailing in the more prosperous parts of Shahabad. Evils which in the latter district were of rare occurrence, or confined to the more backward parts of the district, were looked on as the ordinary rule in other parts of Behar, and it was perfectly clear that the condition of the average Shahabad ryot represented what would be a state of exceptional prosperity and independence elsewhere. I became gradually convinced that the cultivators of Behar generally require an amount of protection from the law and its administrators, which is not needed by the ryots of Bengal, or possibly even by those of the exceptional Behar district of Shahabad, and this conviction has been strengthened by what I have seen in Chumparun. I have now been in charge of this

district for less than six weeks, during which time I have been able to visit a comparatively small portion if it. A brief notice of some of the cases which I have enquired into during that short space of time will probably give a better idea of the state of things here than any general description. In one village the thikadar acknowledges to having made a demand of Rs. 2 a beegah over and above the rent from the cultivators as *salami*. He says that they at last agreed to pay him Rs. 1-8 a beegah, and that, when they come to pay their rent, he first deducts the *salamis* before giving them credit for the rent. As they now object to pay the *salami*, he has refused to give them receipts for the amounts already paid, and threatens to make them over to an indigo factory, of course with the rents actually paid by them shown as still in arrear. It should be explained that nothing is so much dreaded by the cultivators as to have their village leased to a factory. The ryots of another village have held for generations some flooded lands on which they grow rice on the danabundi form of the metayer system. Last year there was a dispute about the valuation, and the cultivators cut the crop before the dispute was settled. The thikadar brought a suit in the civil court and obtained a decree based on the assumption that the produce was forty maunds a beegah which the ryots say was more than double what they actually got from the land. This year the thikadar claimed the same amount, and the ryots have been afraid to cut the crop. I have been over all the lands. The dhan has rotted and is now absolutely worthless. I do not think that, if cut, it would have yielded 25 maunds a beegah; but I am informed that the thikadar is now preparing to put in a claim against the ryots for the value of his share, assuming the produce to be forty maunds. Now these cases are not specially bad ones, and probably each district officer in North Behar has, during the course of his cold weather tour, already come across more serious ones. But what seems to me the grave point about the matter is that such a list of cases should come to the notice of an officer fresh to the district, without any previous knowledge of what to expect, in the short space of time that I have been in Chumparun. It indicates a state of things which should not be allowed to exist a day longer than can be helped. I have already mentioned the Tajpore case, in which I found lands held by undoubted occupancy ryots being converted into the zeraat of an indigo factory against the will of the ryots. The District Superintendent of Police has just sent me a report of a similar case from another part of the district, in which he has found lands long occupied by hereditary cultivators taken from them against their will by the thikadar, and made over to an indigo factory.

6. I have also mentioned another case in which an indigo planter, on getting a thika of a village, applied for constables to be paid for by the factory ostensibly in order to keep the peace, but really of course to help in breaking down the ryots' objections to grow indigo. Now that this has failed, the factory has fallen back on a demand for rents said to have fallen into arrear before the village was taken in thika by the factory. In another part of the district I found that a landlord had raised the rents of an estate settled with him in 1850 under Regulation II of 1819 from about Rs. 17,000, the amount ascertained at the time of settlement, on which the Government revenue of half, viz. 8,500, was fixed, to Rs. 86,000, the amount returned by him for the road cess valuation of 1873-74. He had obtained in one village of the estate a decree for enhancement to between three and four times the rate of rent ascertained at the settlement, on the ground of the improvement effected by the construction of an irrigation embankment and channel which the settlement map and papers show to have been actually in existence when the settlement rates were ascertained.

7. The owner of an adjoining village has obtained a decree for enhancement to what is in this district an exorbitant rate, because the villagers have been so worn out by litigation that they could not afford to fight any longer, but have let the case go by default.

PART VII—MANAGEMENT OF WARDS' AND GOVERNMENT ESTATES.

In spite of excellent principles laid down by Government on this subject in recent Resolutions, I am afraid that our management of these estates is still unsatisfactory, and I would venture to point out the danger of putting on

pressure to realize arrears in Behar without first causing enquiries to be made about the way in which such arrears have accrued, and the fairness of the existing rent-rolls. Many cases have come to my notice during my term of office in Behar which illustrate this. In some of these our action has been indefensible; in some perhaps it might be defended; but it certainly has been unfortunate. As an illustration of the latter, I would instance the Poosa Stud lands known as Mullainugger and Bukhtyarpore. We brought cases to enhance the rents of these lands, which we gained in the lower court. Some of the cases were upset in the Judge's court on a technical ground. All the rents are in arrear, and we are now realizing by the stringent certificate procedure. The enhancement was recommended by Messrs. Henry and MacDonnell, who have both assured me that it was quite fair, as the ryots had held under the stud at very low rates on condition of growing oats, and the rates which we now claim are lower than those paid for neighbouring lands. I did not feel justified in taking action without full enquiry in the face of the opinions of Messrs. Henry and MacDonnell, and owing to the changes in the office of Collector, I was unable to get the enquiry made while I was acting as Commissioner of Patna; but the new rates seemed to me very high, and they were in some cases three and even four times the old rates. Now, even granting that the rates are fair, I think it very unfortunate that we should have the appearance of acting as harsh landlords at the very time that we are taking measures to compel landlords in general to behave fairly to their tenants. I think it needless to bring forward instances of unjustifiable enhancements or of wanton disregard of the rights of cultivators in Wards' and Government estates. These evils are, I trust, not likely to re-appear; but the fact that they have existed makes it very dangerous to put on pressure for the collection of balances, whether current or arrear, without first ascertaining how they have accrued, and I would urge the desirability of reducing rates, at least in Government estates, whenever they have even the appearance of a rack-rent. Perhaps it may not be advisable in Wards' estates to reduce the rates actually existing when we took charge, but all past enhancements should be carefully looked into, and enhancement in the future prohibited unless good cause for it be shewn. Another matter in which I think reform is required is the neglect of the rights of occupancy ryots by officers taking up land under the Act for its acquisition for public purposes. I have remarked everywhere that the ryot's claim on account of his occupancy right is almost invariably ignored, though he is sometimes compensated for the loss of standing crops. Now, although with present rents the value of the occupancy right may be very small, still the ryot is entitled to some compensation for being deprived of it. The Government in my opinion should insist on this point being carefully attended to, and make sure that some compensation, no matter how small, is paid to every ryot with an occupancy right whose land is taken up.

PART VIII—GENERAL ADMINISTRATION.

I meant to conclude these notes with an attempt to show how much more important it is in Behar to provide really efficient administration than to pass the very best laws that could be devised, and to show in detail how defects in our administration have told against the ryot in the past. But I find I must confine myself to a few brief remarks and suggestions.

2. In the first place, a steady effort should be made to improve the police, and the claims of inefficient officers should be postponed to the interests of the people. Some of the officers whom I have known as District Superintendents in Behar districts have not been suited for the work, and very few seem to have even suspected that their subordinates play into the hands of the landlords, and that the action of the police has the effect in many cases of completely crushing the ryots. Until a change is made in the selection of officers for the charge of the police in Behar districts, little improvement in police administration can be hoped for. Then the pressure put upon the police to prevent breaches of the peace should be relaxed. At present it has the indirect effect of throwing the whole weight of the police into the landlord's scale, unless the

Magistrate of the district be very vigilant and very determined. Now the destruction of the occupancy rights of the cultivators of a village, or a wholesale enhancement of its rents, is too high a price to pay for the prevention of a riot.

3. There is now happily no need to urge that picked men should be appointed as district officers in Behar, but more care should be taken in the appointment of sub-divisional officers: some of those I have known have been quite inexperienced, and others quite incompetent. There should be a rule that the best and most experienced Civilians available for sub-divisions should be appointed to North Behar, and very good and experienced Deputy Collectors to South Behar.

4. There should be a good Joint-Magistrate at the head-quarters of each district, large and small, so as to enable the district officer to be about his district throughout the year. It is quite possible in Behar to move about at all seasons, and the practice of confining Collectors' tours to the cold weather should be steadily discouraged. There should be always an adequate staff of Deputies at head-quarters, and the Collector should be relieved as much as possible of purely routine work, so as to enable him to exercise a close supervision over the action of all his subordinates, especially the police and sub-divisional officers. I have often heard it asserted that the action of the civil courts in rent cases is favourable to the ryots, and this has been used as an argument against restoring the jurisdiction in rent suits to the Collector, whose proceedings are supposed to be more likely to tell in favour of the landlord. This argument has generally been used to me by landlords or their representatives, and for my own part I must say that in Behar at least the ryot as a rule seems to get scanty advantages from a resort to the civil courts. It is quite true that the landlord does not often have recourse to the law, for he finds his illegal action cheaper and less tedious. But when he does go into court, he seems to get all he wants, judging from the cases which have come to my notice, and it certainly is the universal opinion of the ryots that the civil courts are of very little protection to them. There are many causes for this. One is undoubtedly the fewness of the courts and the enormous distances which the ryots have sometimes to travel to reach them. Another is the inexperience of so many Moonsifs, and their ignorance of matters relating to Behar. Another is the inferiority of the bar in Behar. As a rule, the landlords retain the best pleaders, and the only men available for the ryots are incompetent. If the trial of rent suits in Behar is to be left to the civil courts, their number must be greatly increased, and much must be done to improve them and probably to simplify their procedure.

18*th January* 1881. J. W. EDGAR.

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ABSTRACT

OF

REPORTS OF DISTRICT JUDGES

ON THE

NEW RENT BILL.

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Chapter of the Rent Bill.	Mr. J. F. Stevens, Officiating District Judge, Sarun.	Mr. F. Cowley, Officiating District Judge, Purneah.	Mr. W. F. Meres, Officiating District Judge, Tipperah.
GENERAL REMARKS.	Regrets very greatly the absence of any provision requiring contracts of tenancy to be reduced to writing. Agrees with the dissenting Commissioner, Baboo Mohiny Mohun Roy, that in this country "more admiration is accorded to the ingenuity with which a contract is broken than to the honesty which respects its binding force." Considers this to afford the strongest possible argument *in favour* of compulsory written contracts. The small proportion of such contracts being reduced to writing is due to the ignorance of the mass of the people, apathy, blind confidence, and perhaps a desire to over-reach. There is no argument against compulsory written leases which would not be equally strong against compulsory registration The relations between landlord and tenant would be much simplified and litigation sensibly diminished. The worthlessness of oral evidence and the doubtful character of the decisions based thereon, call for written contracts of tenancy. If made compulsory, the suit for *pottahs* and *kubooleuts* should be retained in place of the new class of suits introduced by Section 151 of the Bill.	Concurs entirely in the propriety of withdrawing the authority to recover arrears of rent summarily by distraint. As regards the omission of the clauses in the existing law as to pottahs and kubooleuts, states that in Purneah, the number of cultivating ryots who hold under written leases is probably not more than one-fourth of the total number of such ryots. He would be glad to see pottahs and kubooleuts introduced; but is of opinion that the growth of the custom will not be hastened by hard and fast rules known only to the few, and that the facilities which the Bill offers for the settlement of points specially in dispute between landlord and tenant will be sufficient for the present wants of the country. The area of a holding and the amount of its annual rent ought to be contained in every receipt for rent. Were this done, the *practical* difficulty arising out of the grant of leases orally would be reduced to a *minimum*.	As regards the proposed abolition of distraint, the Judge's experience is that it is often unfairly exercised, and he regards the withdrawal of the power as an unmixed good. From the figured returns of the applications for assistance it might be supposed that this right is not exercised to any great extent; but it is a common practice to make one application for the deputation of a peon and to employ him to prevent reaping over large areas until the rents are paid or arranged for. This procedure is known as "Mat Krok" Would retain the law as to pottahs and kubooleuts. Fears that one result of the proposed omission will be that it will get abroad that ryots are not entitled to pottahs. Suits for kubooleuts have been rare, partly because of the landlord being obliged to prove the whole of the terms. But tenants entering on land are more anxious than they used to be to have pottahs.
CHAPTERS I and II. SECTIONS 6 TO 18. Of tenure-holders and under-tenure-holders, and ryots entitled to hold land at fixed rates.	*Sections 8 and 18*—There must have been some mistake in framing these sections. The rule that the increase in cases of alluvion, and the decrease by diluvion, are to be proportionate to the increase or decrease of area, takes for granted that the alluviated or diluviated land is of the same quality as the rest of the land: whereas it may be mere barren sand or it may be rich alluvial soil. The true principle should be that laid down by the High Court, that the sum added or deducted should bear to the whole rent the same proportion that the *annual value* of the portion of land gained or lost bears to the annual value of the whole of the holding originally leased. *Section 11.*—The difficulty found in distinguishing between ryots and tenure-holders would be obviated by written leases. There are so few *ryoti* holdings of more than 100 bighas that the rule proposed will practically leave the difficulty untouched in the great majority of cases. Would lower the limit to 50 bighas without having an inflexible rule whereby a *ryoti* holding would be converted into a tenure solely in view of its area, notwithstanding the proved intention of the parties that it should be *ryoti*.	*Section 6*—In Clause (*a*) the words "at a fixed rent" and in Clause (*b*) the words "the rate of rent," &c., should be amplified with the addition of the alternatives of "total rent" or "gross rent." *Section 8* may be made more equitable by limiting its application to those instances in which the quality of the land lost is not ascertainable. *Section 11.*—Are demises of 100 bighas for a term of years which has expired, and now held by custom under the conditions of the original grant, excluded from the operation of this section? It confers a most valuable right where nothing of the sort exists A person in the position described in the section would probably have to prove that he was a cultivating tenant ere he could successfully contest a suit for ejectment. Every additional interest-holder lessens the amount of profit obtainable by the actual cultivator. Judge would urge that when a cultivator holding under a ryot, with a statutory right of occupancy, has maintained his possession for 12 years, the right of occupancy should be transferred. *Section 13.*—He would restrict the right to sub-let to all tenures created in future if some existing tenures cannot be sub-let.	*Section 8.*—The rule of proportion is liable to work unfairly. In most cases land added by alluvion is unfit for cultivation till time and money have been spent upon it; while land lost by diluvion may be in a high state of cultivation The fairest method would be to value the land by reference to the original valuation of the same class of land Where the rent had been assessed in gross, without a detailed estimate, the rule of proportion might be followed. *Section 9*—Do the "expenses of collecting" include the cost of legal proceedings, *e.g.*, enhancement suits? If the tenure-holder collects his rents personally, how are the charges to be estimated? A few words of explanation would save the Courts from legislating. A fair percentage may be fixed on the gross rental. Now-a-days it would be more than 10 per cent.; say up to Rs. 1,000, 15 per cent., up to Rs 10,000, 10 per cent., above 10,000, 5 per cent., and so on.

Judges on the new Rent Bill.

Mr. H. W. Gordon, Officiating District Judge, Tirhoot	Mr. H. Beveridge, Officiating District Judge, Patna.	Mr. A. C. Brett, Judge, Jessore.
No general remarks.	In his humble opinion, the Commissioners have been too ambitious and have made a draft which, if accepted, will set all Bengal by the ears. His opinion of the Bill is substantially that of Baboo Mohiny Mohun Roy. The real origin of the cry for a change in the Rent law is that Government has imposed fresh duties on the landlords. The Road Cess and Public Works Acts have compelled us to facilitate the collection of rents. If special facilities are necessary for collecting rent on account of Government and its wards, *à fortiori* they are necessary for landlords. But what is wanted is to cheapen and quicken the process, *e.g.*, by reducing the stamp duty on rent suits and simplifying procedure, instead of enacting an elaborate law bristling with innovations.	The vexed question of the relative rights of rent-payers and rent-receivers ought to be allowed to have been settled by the legislation of 1859. Whether Act X created the occupancy ryot, or only partially restored him, he is in a much better position than he was before it was passed; and finality in legislation of this description is more to be desired than rectification of a supposed mistake in the measure of justice granted to him. An amendment of the old law is better than the enactment of a new one, at least as regards the average Munsiff who, if entrusted with a new compass of a refined and intricate character, is pretty certain to run aground frequently.
Section 11.—The arbitrary definition of "tenure-holder" and "under-tenure-holder" appears intended to meet a state of things existing in a few districts of Bengal proper; but in Behar, holdings of over 100 bighas are not very numerous, and where they do exist they are as a rule ryoti holdings in the proper sense of the term, and not similar to the jotes of Rungpore and Julpigooree, the holders of which are practically middlemen The effect, in Behar, will be to change ryoti holdings into tenures and under-tenures, and to confer on cultivating ryots rights and privileges which the grantors never intended, and the grantees never dreamed of acquiring The *jotes*, *chukanis*, and *dur-chukanis* of Rungpore and Julpigooree are alienable and transferable, and the intermediate holders are practically middlemen. In Behar the intermediate farmers, *tiwadars*, *katkanidars*, and *dur-katkanidars*, are mere speculators, and have no permanent and transferable interest, and under the proposed arbitrary definition they will obtain a higher legal status; and sub-infeudation will probably greatly increase and litigation ensue.	No remarks.	The two absolutely synonymous words "holding" and "tenure" should not be used to express two different things. Why not call a ryot's holding a jote? The word connotes cultivation; and as the English language has absorbed the word "ryot," it will assimilate the word "jote." The hard and fast line of 100 bighas should not be employed to demarcate one kind of estate from another. If this is done, 99 bighas forms one sort of estate and 101 bighas another. It would be sufficient to say that if the nature of the estate were in issue, the Court should decide the fact. As evidence, the size of the demise would be an important fact.

Chapter of the Rent Bill.	Mr. J. F. Stevens, Officiating District Judge, Sarun	Mr. F. Cowley, Officiating District Judge, Purneah.	Mr. W. F. Meres, Officiating District Judge, Tipperah.
CHAPTER III. SECTIONS 19 TO 25. Of ryots who have held land for 12 years and acquired a right of occupancy.	*Section 19, Explanation 3 (c)*—Concurs with the Subordinate Judge, Baboo Grish Chunder Chowdhry, that it may produce anomaly in the status of occupancy ryots and complicate their relations if ryots holding under them are allowed to acquire rights of occupancy. An occupancy ryot with a sub-occupancy ryot below him will be, to all intents and purposes, an under-tenure-holder as regards his under-ryot, and a ryot as regards his landlord. It may have the most disastrous effect upon the rents of existing occupancy ryots who till their own fields, whose rents may be forced up to the rates payable by sub-occupancy ryots. *Section 20, Clauses (a) and (d)*.—The benefits will outweigh the disadvantages. Notwithstanding the privation of the power to mortgage, the occupancy ryot should have less difficulty than the non-occupancy ryot in raising enough for his real wants *Section 20, Clause (b)*.—Quotes the Subordinate Judge's remarks, on a subject on which he has himself no knowledge, to the effect that some check should be put to the power of alienation with reference to such abuses as the *Zimma* system in Backergunge, under which a ryot sells his land to a neighbouring proprietor, from whom he takes a lease and thus interposes another between himself and his landlord.	*Section 19, Explanation 1*.—If a person, too infirm to work, transfers his holding to his *next heir*, his years of occupancy should count towards the transferree's right. *Explanation 4 (g)*.—How, if the Sír land after a term was held without any specific agreement? Would it not be well to define *khamar, niy-jote,* and *sir land?* *Section 20, (b), (d)*.—It would be useless to restrict the power to mortgage while giving the ryot the power to sell. Nominal sales would become frequent and, because their real nature could not be established, much hardship would result to the ryot. It would be better to give him an interest of which he could not divest himself except by bequest or will. *Section 20 (e)*.—The compensation should be for such improvements only as are effected before forfeiture has been incurred; and the ryot should be made liable for deterioration caused by his act. *Section 18*.—Last line should run: "The gross produce calculated for *staple crops*." *Section 22 (4)*,—"Produce," probably agricultural or horticultural. *Section 23 (e), illustration*.—Are the 4 annas to be payable in addition to Rs. 8 annual rent?	*Section 19*.—Agrees with Mr. Mackenzie that the 12 years' rule should be reduced to 3, if it be not thought right to declare the existence of occupancy rights in all now in occupation. Notices what may give rise to a fundamental error in the proposed definition of "ryot" who is spoken of as having been *let into* the land If there is any fact clearer than another in the revenue history of Bengal, it is that there were ryots before zemindars. To give *khud khast* ryots occupancy rights irrespective of prolonged occupation is only to give them their own and what was not taken away by the permanent settlement. Quotes passages from the pens of Warren Hastings, Lord Cornwallis, &c. *Section 19, Explanation 4, Clause (h)*.—It is very necessary to provide that, after the passing of this Act, no ryot should be permitted to contract himself, out of the right of acquiring rights. *Section 20, Clause (d)*.—This prohibition of mortgage will prove inoperative and give rise to fraudulent evasions of the law, with the result of harder terms as to interest. *Section 21*.—Fifty per cent. of the gross produce is too large a share for the landlord where he furnishes nothing but the land. *Section 22, Illustration (c) of ground 2*.—The law of the case is sound. But the principle of "*falsa demonstratio non nocet*" cannot be pushed to great lengths, even against the lessor. *Section 23*.—These limitations will prove of great service. Would it not be fair, in cases of enhancement on the second ground, that reduction should be made for land to be set aside for pasture?
CHAPTER IV. SECTIONS 26 TO 31. Of ryots who have held land for three or more but less than twelve years.	Has strong doubts as to the expediency of these provisions They would produce a flood of litigation from the outset, and would embitter rather than improve the relations of landlord and tenant.	*Section 26* will certainly give rise to continuous disturbance of ryots. Would much prefer that the right be granted to every ryot resident in a village in respect of lands possessed by him for even one season. Believes this would be in accord with the feelings of the mass of the people. If this is not deemed expedient, Chapter IV would be better struck out, save in so far as compensations for improvements are imported into other parts of the Bill. *Section 29*.—If entitled to compensation for improvement, the ryot should also be liable for deterioration caused by his act; and the improvement for which compensation is claimed should have been effected before the reason for eviction arose. And in the case of a ryot who has not held for 12 years, he should before commencing an "improvement" serve his landlord with notice, served through the Civil Court.	For reasons already given he would omit this chapter. But if it is to be retained, he would ask what is the effect of the expression "lastingly" in Section 29? Section 30 appears to contemplate the exhaustion of these "lasting" improvements. Why should not more of the provisions of the English Agricultural Holdings Act be adopted, and a schedule attempted of the improvements and the periods they are to last? As the sections stand, a great burden is thrown on the Civil Courts. Would a ryot get compensation for tea-bushes or the cactus plant such as the lac insect feeds upon? Cultivators are planting tea-bushes with a view to the sale of the raw leaf to manufacturers.
CHAPTER VI. SECTIONS 36 TO 42. Of the use of land for building purposes.	Has his entire approval. Its provisions were much needed.	*Section 36*.—It refers to ryots mentioned in Sections 16 and 26. Has not Section 19 been omitted by oversight? Again, are not the words "provided a ryot may," &c, too general? Is not the privilege restricted to ryots mentioned in Sections 16, 19, and 26? Who is to decide what is a "suitable" dwelling-house? Will the "family" include "all living jointly with the ryot or dependent on him"? *Section 40*.—Would it not be fairer to say "within six months after it became known" &c.? *Sections 41 and 42*.—Uncalled for.	*Section 38*.—Excessive and not warranted even by English law where there is no contract for re-entry on breach of conditions. In actions for injury to land, the measure of damages is the diminished value of the property, or of plaintiff's interest, not the sum it would take to restore it to its original state. There will be difficulty if there was negligent delay on the part of the landlord. The ryot wishing to build may give a small present to the landlord's local agent and the landlord may hear nothing till long after. In the absence of contract, Judge would allow ryot to build subject to a claim for compensation. *Section 42* might be altered to make it clear that an enhancement suit being once instituted, no enhancement proceedings should be set on foot again within 10 years.

Judges on the new Rent Bill,—contd.

Mr. H. W. Gordon, Officiating District Judge, Tirhoot.	Mr. H. Beveridge, Officiating District Judge, Patna.	Mr. A. C Brett, Judge, Jessore.
Sections 19 and 20.—To make a right of occupancy legally transferable by sale, gift or otherwise seems of doubtful expediency. The lands will in time pass into the hands of speculators, rival zemindars, and refractory but well to-do ryots. The result will be litigation and embittered relations. When a ryot is debarred from mortgaging his land, how can he raise money to pay debts, &c., except by selling it? Farmers and indigo planters and other traders will get hold of the land, and the area of food-yielding crops will be diminished. It is better to retain the present law of eviction. The power of alienation conferred on zemindars at the permanent settlement has not been productive of good, as most of those estates have passed into the hands of speculators who do not make the best landlords. *Section 19, Explanation 3 (c).*—Is not in favour of a ryot acquiring a right of occupancy under an occupancy ryot. It will cause complications, foster sub-letting, increase the number and grades of middlemen, and augment litigation. *Section 19, Explanations 3 (a) and 4 (d).*—The provisions as to mokururidars and istumraridars unnecessary. Let the Court determine in each case the status and rights of each and of the ryots under him. *Section 21.*—Deprecates interference with existing rents payable according to custom or contract. *Sections 22 to 25.*—Wholesome and fair. But why should enhanced rent be reduced by the amount of road cess?	*Section 20.*—Does not understand why occupancy rights should not be saleable in execution of all kinds of decrees; and stil. less why the owner is not to be allowed to mortgage them. Such mortgages are common, and tend to prevent the out-and-out sale of lands. *Section 21 (and 83).*—It is a wanton interference with the freedom of contract to enact that no ryot shall pay more than half the produce. What are the thikadars to do who have agreed to pay a certain rent on condition of collecting $\frac{9}{16}$ths from the ryots? *Section 23.*—Why should enhancement never exceed double the old rule? The effect will be that no landlords will let new ryots have lands at low or nominal rates.	No occupancy right should be acquired within another; but they should be acquirable under mokuraridars or istumraridars. All contracts in writing should be effectual. Sees no reason why any restrictions should be imposed on the transferability of occupancy tenures.
Would omit this chapter altogether; its provisions are infringements of the rights of the zemindar which are scarcely warranted by the condition of the ryots, either in Bengal or Behar. If compensation is allowed, as provided in this chapter, ryots of 3 years' standing will occupy a more favourable position than ryots of 12 years' standing. Believes that the law will be a dead letter, as zemindars will not allow any ryot to hold land 3 years; that the relations between landlord and tenant will become more hostile, litigation will be augmented, and a constant change of ryots will not tend to promote the agricultural prosperity of the country.	*Section 26.*—Does not see the utility of a new classification of ryots. All under 12 years' standing should be on the same footing.	Every tenant should be at liberty to cut down a tree that he plants, or which has been planted by his predecessor. This is the simplest equity. The provision compelling an auction purchaser to elect to avoid sub-tenures within a year, is a useful one.
Generally good; but the limit of enhancement (Section 42) on the market value of the land seems too low at 3 per cent per annum. It would not be too high at 7 or 8 per cent.	No remarks.	Every ryot should be entitled to build a dwelling house on his jote, and he, and every other person who builds a house, should be protected from arbitrary eviction. The details of protection should resemble those, relating to agricultural land, and should include rights of occupancy.

Chapter of the Rent Bill.	Mr. J. F. Stevens, Officiating District Judge, Sarun.	Mr. F. Cowley, Officiating District Judge, Purneah.	Mr W. F. Meres, Officiating District Judge, Tipperah.
CHAPTER VII. SECTIONS 43 TO 45. Merger.	The law as to merger was in much need of being settled. Sees nothing to object to in the proposed provisions.	No remarks.	Approves of the application of the doctrine as proposed in Section 43; but thinks that the presumption ought to arise in the cases of lunatic or infant proprietors. If it was thought to the interest of the estate that the two interests should remain distinct, it would be open to the guardian to take the necessary steps under this section.
CHAPTER VIII. SECTIONS 46 TO 54. Of the registration of transfers of tenures, under-tenures, and occupancy holdings.	*Sections 49 to 51.*—Scale of penal fee too high, five times the ordinary fee would be sufficient. Some provision should be made for cases where sufficient reason can be shown for the failure to register within three months. *Section 54*—The copy might be made *primâ facie* evidence of the succession or transfer.	It would tend to diminish litigation were the notice served through either the Civil Court or the Collector. It would simplify calculations were the fee fixed at one pice in the rupee when notice was given within three months after the transfer, and at 2 or 3 annas in the rupee in other cases. The power of entry in Section 50 would be likely to lead to litigation, and it would be better to provide that where application (for registration) was not made within a year from the transfer, the tenure would become voidable, at the option of the zemindar, by notice served through court. *Section 54.*—Deprecates interference with zemindar's office. Better that he should give a written acknowledgment of the transfer.	*Section 46.*—A farmer ought not to be permitted to register transfers. Desires to see the system of farming discouraged. After experience in Tipperah believes that a farmer rarely furnishes the landlord with a genuine set of papers from which the condition of the property can be ascertained. Changes in holdings are a source of income to the farmer, who seldom informs the landlord of the transfers which he sanctions. The landlord is in the dark as to what has taken place, and when the lease expires, after an abortive attempt at direct management, renews the lease. Farming leases become perpetuated, and a property becomes honey combed with sham under-tenures. Farmers should not lease or enhance. *Section 47.*—He would allow the incoming tenant to deposit the fee in Court and serve a notice where landlord delayed or refused to register. The occupancy ryot stands in greater need of assistance than the putni talukdar.
CHAPTER IX. SECTIONS 55 TO 64. Of rent, instalments of rent, receipts for rent, deposits of rent, apportionment of rent, and hypothecation for rent.	*Section 56.*—It should be in the discretion of the Courts to allow interest at a lower rate than 12 per cent., where delay in payment is due to causes beyond tenants' control. But as it is not in the nature of a penalty, full interest should perhaps be paid in every instance to compensate landlord. *Section 57.*—Receipt should include name of tenant on account of whom, and that of the person by whom, the money is brought.	*Section 57 (a).*—It would be well to have on *every* receipt mention of the annual rent of the holding. *Section 57 (c).* Practicability doubtful. *Section 58 (b) and (c).*—Much needed. *Section 59 (a).*—Want of knowledge will render futile many attempts to deposit rent for months after the Act comes into force. He would allow the deposit (with interest) at any time. *Section 59 (c).*—Who is to determine whether the rent deposited is the "full amount due?" Would it not be better to require the depositor to state the period for which the rent is due? *Section 64*—Useful and important.	Approves of the proposal to fix the dates of payment. Uniformity has many advantages. *Section 56.*—Leave the law as it stands. If Courts can award interest, they should fix the rate within a statutory maximum. *Section 57.*—Would make it clear that a tenant is entitled to a receipt without fee of any kind. The clerk's fee is a principal source of income, and paid by the ryot to avoid the great difficulties of depositing in Court. It should be the duty of a landlord to file a notice, in the Civil Court, of the appointment and discharge of all amla empowered to grant receipts. An abstract of Section 57, and the text of Section 88, should be printed in the vernacular on the back of the receipt. *Section 59.*—Would omit the declaration required by Clause (*b*) It would throw the ryot into the hands of petition writers, and much increase the cost of making the deposit; the Executive should devise a simple printed form. *Section 63*—Court should be allowed, in its discretion, to make a valuation, as well as a measurement, of the land in which the apportionment is to be made.
CHAPTER X. SECTIONS 65 TO 70. Co-parceners.	*Section 69*—Cites his Subordinate Judges as pointing out difficulties which did not occur to himself. When one co-parcener sues making the others defendants, is he to sue for his share only or for the entire rent due? If the latter (see para. 137 of report) this should be stated in the section. Ambiguous on another point. The section ought to make it clear that a suit by some of the co-parceners would not lie, unless in cases falling within the exceptions.	*Section 67, line 12.*—As Section 149 does not mention these managers, powers should be given them "for the purposes of management and *also for the recovery of rent.*" *Section 70.*—Where one of several co-partners has given his share in putni, this section would apply to the putnidar also. But the point might be explicitly determined in the law.	No remarks.

Judges on the new Rent Bill,—contd.

Mr. H. W. Gordon, Officiating District Judge, Tirhoot.	Mr. H. Beveridge, Officiating District Judge, Patna.	Mr. A. C. Brett, Judge, Jessore.
Good and useful.	Why introduce this difficult doctrine into the Bill? The country does not want it.	Would be sorry to see this doctrine introduced in any shape.
Generally salutary, but the period prescribed in Section 46 should be six months instead of three months. The copy referred to in Section 54 might be made *primâ facie* evidence of the succession or transfer.	No remarks.	Does not approve of a landlord being allowed to attach an occupancy jote if a transfer has not been registered. What is to prevent a landlord from telling A that his transfer has been registered, and then saying that no registration has been effected?
Section 57.—Excellent. Judge would, however, omit Clause (*c*) of Section, 58, and Section 60, as placing too much power in the hands of the ryots. *Section 64.*—In occupancy holdings, as well as in holdings of tenants-at-will, the standing crops should be declared to be hypothecated for the rent, in other words the ryot should not be allowed to sell, mortgage, or otherwise dispose of his crops to the prejudice of his landlord. In lieu of distraint, which is a system open to abuse, landlords will be able to apply for attachment of the crops before judgment; and if such crops are hypothecated for rent, the remedy will be obtainable legally and without fear of abuse. Unless the crops are so hypothecated, landlords will have no sufficient remedy against tenants-at-will.	*Section 55 (b).*—An unnecessary interference with custom. *Section 61 (b)*—Not fair that the landlord should pay for the notice. *Section 64.*—Why should the landlord be debarred from arresting his debtor, or attaching his moveables; the attachment of immoveable property being a very slow and expensive process?	Distraint has been much abused and should be done away with. The hypothecation of tenures (Section 64) is a corollary, and he agrees with all that is said in paras 125 to 137, except that he thinks that the District Judge should be empowered, when he orders an estate to be attached under Regulation V of 1812, to issue a precept to the Collector to manage it, the latter having facilities, such as the former has not, for obtaining a manager.
Doubtful whether Sections 65-68 will achieve the desired object. Purchasers of shares, who have failed to obtain possession, will make use of them to secure recognition of their rights, and as regards co-parceners in joint possession, the Full Bench ruling on the subject of apportionment of rent will meet their case. Ryots are harassed by disputes between co-parceners, the District Judge should be allowed to interfere only on the application of the Collector or a majority of the tenants. Sections *69 and 70* are founded on case law [illegible] objectionable.	No remarks.	No remarks.

Chapter of the Rent Bill.	Mr. J. F. Stevens, Officiating District Judge, Sarun.	Mr. F. Cowley, Officiating District Judge, Purneah.	Mr. W. F. Meres, Officiating District Judge, Tipperah.
CHAPTER XI. Sections 71 to 80. Of some miscellaneous rights of landlords and tenants.	*Section 77 (b).*—In such an important matter as this, doubts the policy of ignoring custom, which varies with the nature of the lease, the kind of tree, &c. Sees no objection to the provision, if not made applicable to trees already planted. Ryots may not feel strongly in the matter, but zemindars may. *Section 79 (8).*—Quotes Subordinate Judge Baboo Grish Chunder Choudhri as to forfeiture by disclaimer, and thinks there is much force in his objection to the practical working of the law, which is that though theoretically just, the rule may go hard against the ryots, *e.g.*, where there are rival claimants to an estate. The ryots will be cited as witnesses most probably by the stronger party in possession. If they refuse to give evidence in his favour, they will incur his displeasure and its consequences. If they give evidence in his favour, his adversary will lose no time, in case the litigation ends in his favour, to avail himself of the law and turn them out.	*Section 75.*—Would allow every recorded proprietor to measure all lands lying within his estate and also every landlord deriving his title from any such *living* proprietor. *Section 77 (a).*—Would exempt the digging of tanks from the list of improvements; an improperly dug tank may be deleterious. *Section 77 (b).*—It is usually the custom to allow the landlord half the value of the tree. This is right and proper in respect of *bhaoli* tenures, where the landlord receives a share of the crop, and has probably been overlooked. *Section 79 (3).*—Such notice should ordinarily be served through the Civil Court or a public officer. *Section 79 (7), Explanation.*—The institution of a suit for ejectment should be made equivalent to a notice to quit. *Section 79 (8)* much required in this country. *Section 80* would be fair and proper if the landlord could eject at will, but he cannot do so, and in nearly every case, the cultivator must have grown the crop with the knowledge that he had no right to do so.	*Section 77.*—This provision ought to have some sanction. Compensation should be payable to the extent to which the letting value of the land has been reduced. *Section 79, clause (8).*—Approves of a tenant being made liable by disclaimer to ejectment. A very common source of trouble arises through a claimant to immoveable property first gaining over some of the tenants to give evidence of possession and then obliging the other side to sue to establish title. The quarrels of landlords are the opportunities of tenants. The proposed provision will lead to a diminution of rioting and the like offences.
CHAPTER XII. Sections 81 to 86. Of Special Provisions for Behar.	*Section 81.*—Quotes the remarks of the Subordinate Judge Baboo Grish Chunder Chowdhri, to the effect that it will confer retrospectively the right of occupancy on a number of ryots in land in which they have not those rights; that it will revive, in some cases, rights either abandoned or not enforced, and transfer them from land in which they originally accrued to other lands held for three years only. The language of the section seems wide enough to transfer a right of occupancy from 1 bigha to 50 bighas in the same estate; and to entitle a ryot to claim a right of occupancy in land held by him for three years under one of the proprietors of a divided estate, by reason of his having such a right in land held by him under another proprietor of the same estate. The variation in area of ryotti holdings in Behar is due to partial evictions made too often, and the amalgamation of the land left with other land subsequently let. This evil, however, and the difficulty it imposes on the ryot, need not lead to so sweeping a change as that proposed. The best remedy will be to compel the landlords to give pottahs to their ryots. District Judge thinks so too, as this will be a permanent remedy, whereas the other would be temporary.	*Section 81.*—Would give every *resident* ryot who has been cultivating *any* land in the village where he lives for a term of 12 years next preceding such date, a right of occupancy in all land held by him on that date in his village. *Explanation.*—Is the word "proprietor" here used in accordance with its definition in Section 3? Is Zirat "Sir" land within the meaning of Section 19, explanation 4 (g)? *Sections 84-85.*—The system of estimating the standing crops is rough and liable to abuse. Any suit for a share in the crop so estimated should be brought within three months after date of such estimate. *Section 86.*—Will not the limit in Section 83 suffice? Why afford facilities for abandoning a system under which questions of enhancement and abatement are self-adjusting and the landlord's claim is least when the ryot is least able to pay.	*Section 84.*—The success of the procedure will depend on the person selected for the duty of valuation. It would be safer for the officer to tender to the landlord the share which the ryot was willing to give. If not accepted, the share might be sold by auction, and the proceeds (less costs) tendered to the landlord and, if not accepted, deposited. The landlord might, if so minded, sue for the difference between the gross proceeds of the sale and the selling price, at the time of the tender of the whole property claimed by him. If he succeeded, the amount deducted as the costs of the officer's deputation and of the sale might be added to the decretal amount.
CHAPTER XV. Sections 95 to 132. Proceedings to enhance the rent payable in money by ryots having a right of occupancy, or by tenure-holders or under-tenure-holders.	The abolition of the notice of enhancement is a great improvement. It is generally objected to as not having been served, a mere routine objection consuming the time of the Courts. Doubts the policy of allowing landlords a choice of Courts with reference to the first three grounds of enhancement; all such suits should be instituted in the Civil Courts, subject to transfer to the Collector either as provided in Section 130 of the Bill or in the manner suggested by Mr. Dampier at page 95 of the report.	*Section 119 (b).*—He would limit the Collector's discretion in regard to individual notices to proceedings taken against more than (say) ten ryots. In any other case each ryot interested should receive a personal notice in addition to the general one, and it should be served in the manner prescribed in the Civil Procedure Code for a summons to a defendant.	No remarks.

Judges on the new Rent Bill,—contd.

Mr. H. W. Gordon, Officiating District Judge, Tirhoot.	Mr. H. Beveridge, Officiating District Judge, Patna.	Mr. A. C. Brett, Judge, Jessore.
Section 77 (b).—This provision is not consonant with the recognised custom in Behar, under which the landlord is held to be entitled to half the produce (when held *bhaoli*) or half the price of the trees planted by the ryot. *Section 79 (4).*—Why should the landlord wait a year? The tenancy should determine as soon as the tenant leaves the land.	No remarks.	No remarks.
Section 81.—Seems unreasonable that a ryot who has held, say, a *dhur* of land around his homestead for 12 years, should acquire a right of occupancy in any other quantity which he has held or cultivated for only three years in some other part of the same estate. Nor is so sweeping an infringement of the rights of zemindars justified by the impoverished condition of the ryot, which is due to other causes than to the want of occupancy rights, *e.g.*, the farming system, excess of population, exaction of illegal cesses, &c. Judge would allow the ryot who has held or cultivated other land than zerait, continously, for 12 years in the same estate, &c., the legal presumption that he has cultivated all the land he holds therein for 12 years. The definition of *zerait* is opposed to the accepted meaning of the term in Behar. The general law (Section 19, explanation 4, clause *g.*) should apply equally to Behar and Bengal. *Section 82.*—Is inequitable to the landlord to give him similar rights in the new land to what he had in the old (which he relinquished with his eyes open and of his own free will), and without any reference to quality or quantity. *Section 83.*—The legal presumption should be that the proprietor is entitled to one-half, until the contrary is proved. *Sections 84 and 85.*—Excellent. *Section 86.*—Of doubtful benefit. Would as a tentative measure give the ryot the legal right of commutation.	*Section 86.*—The ryot should not have the right to insist on commutation of grain rents,	No remarks.
The dual jurisdiction seems objectionable. As regards the preparation of a general table of rates, &c., the enquiry may be held by the Collector by the deputation of an experienced and trustworthy revenue officer; but the trial of regular enhancement suits should be left with the Civil Courts.	*Section 99, &c.*—The provisions about giving the Collector concurrent jurisdiction seem retrograde and unworkable. The proposal in Section 96 to do away with notices of enhancement is a heroic remedy. It would be almost as effectual to transfer the serving of notices to the Civil Court; nearly all the difficulties in the way of proof arising out of the fact that the service of notice and the trial of the suit are entrusted to different authorities.	All suits for enhancement should be instituted in the Civil Courts, and it should be left to the District Judge to *propose* the transfer to the Revenue Courts of any case, or set of cases; such transfer to take effect if the Collector agrees with him: the difference (if any) to be determined by the Commissioner.

Chapter of the Rent Bill.	Mr. J. F. Stevens, Officiating District Judge, Sarun.	Mr. F. Cowley, Officiating District Judge, Purneah.	Mr. W. F. Meres, Officiating District Judge, Tipperah.
CHAPTER XVIII. SECTIONS 165 TO 225. Of the procedure in suits for the recovery of arrears of rent, &c., and certain other suits.	Approves generally, but asks, with reference to Section 166, how or when the relation of landlord and tenant is to be "proved," and how a case such as is put in the illustration to Section 169, where the tenant denies the relationship can be tried under the special procedure. Quotes the Subordinate Judge Baboo Grish Chunder Choudhri, with whom he agrees in thinknig that questions of disputed title should not be touched unless they are tried to the end once for all, and would therefore confine the summary procedure to cases where the relation of landlord and tenant is admitted. The Subordinate Judge doubts whether the prohibition as to adding parties who set up an adverse title (though some check) is a sufficient check so long as the Courts are required to try questions of title when they are raised. He has often found an intervenor, whose application to be made a party has been refused, carry on the litigation in the name of the tenant. Suggests that the Court should confine its inquiry to the question whether the defendant has, by payment of rent or otherwise, acknowledged the plaintiff as landlord.	*Section 165* (3) might show more clearly that it is intended to cover cases in which the tenant puts forward a title; and might be extended to cases in which the ouster of the tenant was due to persons acting under the authority of the landlord.	No remarks.

Judges on the new Rent Bill,—concld.

Mr. H. W. Gordon, Officiating District Judge, Tirhoot.	Mr. H. Beveridge, Officiating District Judge, Patna.	Mr. A. C. Brett, Judge, Jessore.
Generally good. But, as regards appeals (Section 220) he would give the right only when the amount sued for did not exceed Rs. 20 or 25. There are very few suits in which the amount claimed, including interest, does not exceed Rs. 10; and, as the District Judge has been given revisional jurisdiction in petty cases, the risk of the Munsif coming to an erroneous conclusion in them is very small.	Much of this chapter superfluous. One or two special provisions may be made, but there would not be any harm if the whole of Act X of 1877 applied to rent suits. Objects strongly to the abolition of distraint, which is the simplest and most effective means a zemindar has for realising his rent and a powerful check against the rent being withheld.	Chapter XVIII should not stand. There is no royal road to facts; and as the procedure now stands, if a District Judge is careful to examine the work of his subordinates, rent cases are disposed of as quickly as can be expected. But clause 6, para. 176, hits off a serious blot. Very often it is necessary that the rights of an intervenor should be adjudicated in a rent suit, and it is absurd to take the judgment as a *res judicata* in a subsequent regular suit.

DIGEST

Of reports of Subordinate Judicial Officers upon the new Rent Bill or proposed "Bengal Landlord and Tenant Act, 1880."

CHAPTER I.

SECTIONS 6—15.

OF TENURE-HOLDERS AND UNDER-TENURE-HOLDERS.

BABOO BHOOPUTTY ROY, *Sub-Judge* of Burdwan

As regards the presumption arising from 20 years' holding at unchanged rent, thinks "it is still necessary to limit this 20 years next before 1859," with reference to Act X of 1859. Might be done in the law of evidence.

Alludes to the imperfect language in which the grounds of enhancement were set forth in the law of 1859, and thinks that the proposed Bill makes it "a little more clear;" but that the words "same class with similar advantages" may involve difficulty.

Section 10.—Objects to the limit to enhancement in this section, and to the enhancement being gradual. The landlord has an indefeasible right to a "fair and equitable rent," and it is opposed to all law and justice to limit his power to enhance, *i.e.*, "to reduce it to any limit."

BABOO PROMOTHONATH BANERJEE, *Second Munsiff* of Burdwan

Like all previous enactments in connection with the landed interests in this country, the Bill rightly attempts to "preserve the tone of all the incidents of the great settlement of 1793."

There could be no safer guide for determining the relative positions of tenure-holders and ryots than the *area* of the land, but the standard of 100 bighas fixed in Section 11 ought to be raised to 200 bighas at least. This would not be raising the status of the ryot too high, considering the advantages for cultivation which a Bengal ryot possesses, together with the widespread practice of subletting lands to bhag-jotedars when a ryot has not a sufficient number of male members in his family for actually cultivating the full area. In the absence of primogeniture,

the Hindu law of inheritance will in half a century reduce the area of a tenure or under-tenure nearly to the size of the holding of a last class ryot, although the mere name of the tenure will carry with it rights and privileges not allowed to an occupancy ryot. A provision to the effect that a tenure once created would never lose its privileges, even if reduced by distribution to 5 bighas, may obviate the objection before alluded to, even if the limit of 100 bighas be untouched. The same argument may apply to the case of a ryot, the area of whose holding may so increase in course of time as to bring it under the category of an under-tenure.

Section 9.—The provisions as to enhancement are very complicated. The limit "fixed at 30 per cent. of the actual profit in case of a tenure or under-tenure is one of the fairest data to proceed upon in fixing a fair and equitable rent."

The simplest way is to take the average of actual produce for ten years as the standard for enhancement, with the limitation that a second enhancement will not take place until the expiration of the next 20 years.

BABOO AUGHORE NATH GHOSE, *Sub-Judge*, Dinagepore.

Section 9.—The maximum limit should be raised from 30 to 50 per cent.

Section 19.—Government declared in 1793 by clause 1, Article 7 of the Proclamation that the Governor General in Council would, whenever he deemed it proper, enact such regulations as he might think necessary for the protection and welfare of dependant talukdars, ryots, and other cultivators, and Article 6 required proprietors to act with good faith and moderation towards the dependant talukdars and ryots. Is it at present proper and necessary to enact a regulation preventing the action of the contracts interfering with the acquisition of a right of occupancy? And are not proprietors bound by the rule of good faith and moderation to allow ryots of 12 years' standing to enjoy lands at fair and equitable rates without the fear of being ousted? Both questions may be answered in the affirmative. The increase of population and the rise in the price of produce have created a greater demand for land now than at the time of the permanent settlement, and eviction is the greatest misfortune which can befall a Bengal ryot. It is therefore high time for Government to

pass a law removing obstacles in the way of a ryot's acquiring rights of occupancy.

As a ryot may hold 100 bighas of land under one pottah, he will probably sublet some of his lands permanently. Besides, as all occupancy holdings are made transferable, it is very likely that some of the holdings will, in course of time, go to the hands of persons other than actual cultivators, thus rendering it necessary to give cultivators opportunities of acquiring rights of occupancy. At the same time it is also necessary for the protection of the same class of tenants that a proviso should be added, to the effect that, when a minor inherits an occupancy holding, the sub-tenant of his lands shall not, during his minority, acquire any right of occupancy. Such right should only accrue on his occupying the lands for 12 years from the date on which the minor attains his majority.

BABOO GOPI NATH BANERJEE, *Sudder Munsiff* of Dinagepore.

Section 11.—Is objectionable, as the right conferred thereby is made independent of the custom or contract to the contrary.

BABOO MATADIN, *Sub-Judge*, and BABOOS SHEW SHANKAR SAHAR and MOHENDRO LALL GHOSE, *1st* and *2nd Munsiffs* of Gya.

Section 3.—They do not think it necessary to alter the accepted definitions of "ryot" and "land," and are opposed to radical changes and new rights. The term *ryot* should be confined to its natural meaning of *actual* cultivator of the soil, who (and not the speculator) ought to be protected by the legislator, and the term "land" should not include "woods and water" which (it often happens) have been settled by Government with another proprietor, and by the proprietor with different ryots.

Right of occupancy ought not to be extended to homestead lands.

Section 9.—Thirty per cent. of the balance, after deduction of collection charges, is too much for a tenure-holder when the zemindar has to make punctual payment of the Government revenue and other cesses, such as road and public works, zemindary dâk and embankments.

Section 10.—The first limit to enhancement not advisable, seeing that the Court can make the enhancement gradual. The restriction is likely to increase litigation if a landlord getting one-half of the rent in his first attempt, is compelled to bring a fresh suit for the other half after 10 years.

Section 11.—The provisions of this section are entirely new. It creates a new

class of tenures, without regard to their origin or the rights of the persons holding them. Instead of an arbitrary limit of 100 bighas, it would be safer and more just to say that all the holdings which in their inception were *jungleburi* tenures, *i.e.*, created for the purpose of reclaiming lands (whether containing 100 bighas or less), shall be deemed to be tenures within the meaning of Sections 8, 9, and 10: "Because the test of reclamation seems to apply to all the holdings, large or small, of all the districts of Backergunge and Midnapore, under whatever designation they are called," and although from Mr. Glazier's report it does not appear that the jotes of Rungpore were in their inception *jungleburi*, yet from the personal experience of the Subordinate Judge and Munsiffs (of Gya) in Purneah, which borders on Dinagepore and Rungpore, almost all the jotes were in their inception demised for bringing land under cultivation.

Again, to declare the tenures referred to above to be transferable only after an occupancy of 12 years is against custom. To quote Mr. Glazier's words, "jotes are saleable quite irrespective of the term during which they have been held, &c., &c. If a man gets a jote to-day, he can legally transfer it by sale to-morrow."

The provision in Section 19, explanation 3, clause (*b*), declaring all ryots with rights of occupancy possessing more than 100 bighas tenure-holders, and their *korfa* tenants, occupancy ryots, is opposed in spirit to the Commissioner's remarks in paragraph 28. The rate paid by the korfa tenant will in future be deemed the occupancy rate, which must bring on a wholesale rack-renting. Occupancy ryots do not stand on the same footing as those who have reclaimed the virgin soil, and there is nothing in the circumstances of the former to justify an encroachment on the zemindar's rights.

Section 12.—The margin of profit allowed by this section to the tenure-holder is too high. It ought to be reduced to 15 per cent., or it will encourage sub-infeudation.

BABOO KEDAR NATH ROY, *Additional Munsiff*, Patna.

Sections 3 and 11.—A demise may be made by a proprietor or Government of more than 100 bighas of land, and yet the holder of the demise, instead of subletting it to ryots, himself cultivates the land. Such instances are common in Behar,

where ryots have sometimes 300 or 400 bighas "in their cultivation." In such cases should the demise be looked upon as a tenure? It cannot be said to be "immediately superior to that of the ryot." Nor can the "demise-holder" of 300 bighas, who "makes a demise of 200 bighas to another, who therefore becomes an under-tenant (tenure?) holder," be said to be *immediately superior to the ryots.*

Under the definitions in these sections a julkur lease-holder of more than 100 bighas may acquire a permanent and transferable right to it which would be in contravention of the settled law with regard to julkur (23 Weekly Reporter, 433, and Section 26, Act XV of 1877).

The Bill contains no exhaustive classification of tenure-holders analogous to that of the ryots, *e.g.*—

(1) Tenure-holders at fixed rates.
(2) Ditto having right of occupancy.
(3) Ditto not having right of occupancy.

The last class is not provided for. The result is, *1st.*—There is no provision for their ejectment unless they make default in payment of rent; their rights are as secure as those of an occupancy ryot. Permanency is intrinsic to their tenure without 12 years' occupancy. *2ndly.*—There is no other remedy against a defaulting tenure-holder except sale. *3rdly.*—Sections 9 and 12 protect him against enhancement up to a cetain limit, and place him in a far better position than the 3 years' ryot or the tenant-at-will. *4thly.*—There seems to be no reason why the grounds of enhancement applicable to occupancy ryots should not hold good with respect to tenures created by this Bill. (*5thly.*—Irrelevant reasoning and groundless objection.) *6thly.*—The legal incidents of putni talooks are mentioned, but not of tenures created by the Bill, which therefore (comparing this Chapter with Section 20) will be saleable in execution of money-decrees, and mortgageable. *7thly.*—No provision for relinquishment.

The effect is that these so-called tenure-holders are in a more favourable position than occupancy ryots.

N.B.—No definition attempted of the term "khodkhast" (used in Section 142) which gave rise to the whole of the innovations proposed by the Commissioners.

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Baboo Koylas Chunder Mozoomdar, *1st Munsiff*, and Baboo Russick Chunder Roy, *2nd Munsiff* of Mulfutgunge, Zillah Fureedpore

Section 11.—The Bill puts forward an arbitrary rule for the determination of the status of ryots and different classes of tenure-holders; this, these Munsiffs are afraid, will complicate the matter and give rise to unnecessary litigations.

Baboo Girindra Mohun Chuckerbutty, *2nd Munsiff* of Bhanga, Zillah Fureedpore

Section 11.—A definition of tenure-holder is "highly necessary to remove an uncertainty which now exists regarding their status as distinguished from ryots," but no retrospective effect should be given to the one proposed. "The limit proposed, holding 100 bighas by a single demise," also seems to him "too high; it may be extended (*query* restricted) to 50 bighas as proposed by Mr. Dampier;" while the nullification of contracts seems objectionable on the grounds of both principle and expediency. It will interfere with the progress of society by fettering independence of action, while it will put a stop to the consolidation of ryots' jummas by a single demise, which is generally a benefit to the ryots themselves, not to say that large ryotee jotes will, with the passing of the Act, be turned into tenures and under-tenures if retrospective effect be given to the said provision, to the greatest injustice of the zemindars whose interest will be sacrificed, for the grounds and limits of enhancement are very different with regard to the two kinds of tenancy.

Baboo Jodoo Nath Roy, *Sub-Judge*. Baboo Kedar Nath Mozoomdar, *2nd Sub-Judge* Baboo Kedar Nath Chatterjee, *1st Munsiff*. Baboo Jogendra Narayan Deb, *2nd Munsiff*, Midnapore.

Section 11.—They object to Section 11(*a*) and (*b*) regarding the rights proposed to be given to ryots holding more than 100 bighas who have not yet acquired any right of occupancy.

Baboo Sasi Bhusan Chaudhuri, *2nd Munsiff* of Contai, Midnapore

Section 11.—Will not be welcomed, for a jote right in fertile tracts is far more valuable than a mere under-tenure with a right to collect equitable rents from occupancy ryots. There are hundreds of ryots who actually cultivate jotes of more than 100 bighas with their own hands, assisted by members of their families and by hired labourers. To these the section will prove an unmitigated hardship if by accident they sublet a portion of their jote for 4 or 13 years, for, in either case, the jote right is practically extinguished by re-entry having become virtually im-

possible. The mass of the people, illiterate as they are, do not understand the meaning of an Act as soon as it is passed, and that will explain the general silence as to this and other sections; but when years go by and the law comes to be worked, the Munsiff is afraid the hardship will be keenly felt by the ryots, and their discontent will be immense. The definition of "ryot" is a natural one, and is universally acceptable; but the saving clause, destroying the long-enjoyed private rights of many a rude peasant and conflicting with time-honoured custom, is at variance with the sound rule inculcated by Dr. Field, that all customs—traditional, local, and special—shall have the force of law.

In the Majnamutha and Jellamutha estates of Contai, where the salt inundation of 1833 had left large tracts uninhabited and waste, the Government in 1845 granted jungle-clearing leases of upwards of 100 bighas to scores of men, giving them the rights of khoodkast tenants, though they were non-residents, and the leases distinctly mention their jotedari or cultivating interests. These rights have now become very valuable, and merely because they are not under-tenures, but ryotee holdings. Again, the abolition of the Salt Agency in 1864, gave occasion for the disposal of the immense tracts of jálpai land which the people were willing to cultivate, and in the present settlement (with which the Munsiff is now dealing), the Settlement Officer has granted pottahs of 100 bighas and upwards to numbers of ryots. Though the leases have not up to this time run up to twelve years, the Government have accorded to them the rights of occupancy ryots.

Thus the Government has all along recognised the justice of the natural definition of a ryot, and given the right of a ryot to all those whose holdings, though upwards of 100 bighas, are ryotee in their inception. The saving clause tends to reverse not only this humane policy, but also the current of rulings of the High Court. The right is not prized by those who are affected by it; and it is felt that the end will be sufficiently gained by making occupancy rights transferable, disallowing eviction in the case of occupancy ryots, and compelling the landlord

to sell the tenure in the first instance. The saving clause in the definition of ryot, as well as Section 11, should be omitted.

BABOO MUNNOO LALL CHATTERJEE, *Sub-Judge*, Moorshedabad.

Section 6.—The distinction between ryots of Government khas mehals and ryots of zemindars should be avoided.

Section 9.—Encroaches upon the right of the zemindar to enjoy the amount which has been hitherto derived by him under immemorial custom and regulations; and deprives him of the freedom of enjoyment of that vested proprietary right in the soil which was declared, at the permanent settlement, to be of a nature with which no power in the country could interfere. The maximum of profit to tenure-holder or under-tenure holder should be [not 30 per cent. as proposed, but] 10 per cent. as provided by Section 8, Regulation 5 of 1812.

Section 10 [*and 23*].—The provisions of Sections 10 and 23 *b* are arbitrary and in most instances appear neither equitable nor just, and in some cases would perpetuate fraud to the injury of the zemindar's interest.

Section 10, Clause (*b*).—Should be general. The expression "by a Civil Court under the provisions of this Act" should be expunged, and in lieu of "the date of the final order so enhancing such rent" should be inserted the words "such enhancement, and without statutable grounds justifying enhancement." Cases for enhancement of rent are harassing to ryots and force them to neglect cultivation.

Sections 11 and 12.—Legislative interference is not necessary; for it is but just and equitable that no contract should be interfered with or custom which has the force of law. The interest of the zemindar is likely to be jeopardized. It will engender idleness and vicious habits, and serve to divert capital from other useful channels to land, which will practically transform the holders of such interests into small land owners, who will be merely annuitants without any substantial good to the community. If these sections be retained, they will facilitate oppression and extortion, and ultimately the agricultural community will suffer by the avarice and rapacity of the holders of interests intermediate between the zemindar and the actual cultivator.

The words "permanent and transferable" are misleading and encroach on vested rights.

Section 11.—There should be a legislative distinction such as this section proposes; and the original conception of a ryot suggests that his *status* should be determined by the quantity of land included in a single holding: but a hard and fast rule is likely to be prejudicial, in nine cases out of ten, to the vested rights of parties concerned. As a compromise, he suggests that the section be so modified as to provide that the quantity of land should raise only a rebuttable presumption.

BABOO SHAMBHU CHUNDRA NAG, *Munsiff* of Pubna.

The immediate effect of the proposed rule upon the large ryotee jotes of Rungpore and Noakhally will be to attach to them the liabilities of tenures to the detriment of the vested rights of the holders of such jotes as well as to those of the zemindars, independent talukdars, and other landholders in whose estates they lie. Many of the tenures so created, if allowed to remain what they originally were, would never have been liable to sale for any personal debts under the rule proposed in the present Rent Bill [*vide* Section 20(*a*)], but they would be so liable in their altered status.

Sections 9, 10, and 12.—The limits to enhancement introduced in Sections 9 and 12 are what they should be; but the provisions of Section 10 appear to be somewhat arbitrary. If a tenure or under-tenure is capable of bearing enhancement beyond double its previous rent, reason and justice seem to demand such an enhancement. And why should the rent not be liable to enhancement or abatement for ten or any number of years following the final order in an enhancement suit, if, owing to change in the state of the soil, or the market, or the like, it becomes capable of bearing enhancement or entitled to abatement? Section 10 should be dropped and the matter left to the discretion of the Court.

Section 11.—Does not agree with those who object to the *size* of the holding being made to determine its *status*. This criterion would not lead to litigation. On the contrary, it is difficult to find out the origin of a holding, first, where there is no documentary evidence; secondly, where many years

BABOO JOGOBUNDHOO GANGULY, *1st Munsiff*, Bogra Zillah Pubna

have passed since it was created; thirdly, where the proprietary interest has changed from hand to hand. Hence the section, instead of leaving the Court to grope in the dark for want of evidence, gives a sure and certain criterion.

BABOO MOTI LALL HOLDAR, *Munsiff* of Shabazpore, Zillah Pubna.

Section 11.—The Rent Law of 1859 has made people familiar with the terms "tenure-holders" and "ryots," and everybody knows their meaning and application. To attach a new significance to them would undo the effects of existing laws and authoritative decisions. It would unsettle men's minds and result in the cropping up of litigation from all sides. The word "ryot" is now very wide in its meaning, but, as used in the Bill, it would be difficult to conceive who would not be a ryot. If the object of the Legislature be to convert the occupiers of small portions of land into peasant proprietors with new rights (rights, however, more or less enjoyed all along by custom), it would be better if the area of this class be a little more expanded and more persons brought under it to enjoy those rights He would therefore raise the limit to 200 bighas.

The limit of 30 per cent. put by Section 9 would work hardship on zemindars. In cases of sub-infeudation of two or more degrees as in Rungpore and Noakhally, with this allowance of profit to tenure-holders, zemindars would not get any increased rent, whereas their under-tenants would enjoy the benefit of enhancement. Keeping the 30 per cent. for other districts, there should be a special rule for Rungpore and Noakhally.

Section 10 (a) and (b).—The provisions limiting enhancement, making it gradual, and fixing it for 10 years, would be very much to the advantage of tenure-holders. If the rents were at once raised to the highest limit, it would work very hard upon them. But there is a disadvantage in progressive enhancement, *viz.*, that it would keep zemindars and tenants in a constant state of litigation, and would deprive zemindars of enjoying the full enhanced rent for a length of time.

BABOO AUSHOOTOSH ADDY, *1st Munsiff* of Rungpore

In the relation of landlord and tenant the effects of custom are nowhere so prominent as in the terms "talukdar" and "ryot." No line of demarcation can be pointed out in the transition from the condition of ryot to that of a superior holder, and no attempt has been previously made

to indicate the distinction. Custom has so moulded it that it is difficult at this advanced stage to make out the difference. Hence the jotedar of Rungpore paying one rupee rent, or a tenure-holder of Dacca getting a few rupees for malikana, may style himself tenure-holder with as much reason as a person who pays rent to the amount of Rs. 400.

The idea which the word *Talukdar* conveys is that of a person having a substantial position in society, "having several quantities of land at his disposal, and several other incidents appertaining to a person in position." Pursuant to this, and in the absence of any principle of distinction, Section 11 fixes a limit having reference to the quantity of land "more than 100 bighas in a single demise;" or to express it in more familiar terms, "a person who pays rents to the amount of Rs. 300 or more in a single demise," &c., may be a tenure-holder. When his rent runs at a uniform rate, Section 5, Act VIII of 1873, calls him a tenant at fixed rates; Section 20, Act XVIII of 1873 (North-Western Provinces Rent Act), does not specify any limit; while Section 9 of the Bill limits the profits of a tenure-holder to 30 per cent. (Reg. V of 1812, fixes it at 10 per cent.), so that the assessment tends to press upwards, and the rate will not be uniform in all permanently-settled places like parts of Benares and Madras.

Section 11.—Taking the test laid down in this section for distinguishing a tenure-holder from a ryot, a person possessing less than 100 bighas reverts to the position of a tenant, and his tenure is converted into a ryotee holding, and he may not inconveniently be called an "ex-proprietary tenant." Section 7 of Act XVIII of 1873 would give him a right of occupancy without reserve; but here it will depend upon the nature of the holding. If he comes under Section 19, he will acquire a right of occupancy; otherwise he will be subject to all the incidents of ordinary tenancy.

Section 10.—By limiting the enhancement to 10 years, a landlord will be debarred from participating with his tenant in any increase in the produce of the land which may take place annually, the landlord labouring the while under the disadvantages arising from loss in exchange on account of the depreciation in silver.

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Of Ryots who have held land for twelve years and acquired a right of occupancy.

CHAPTER III.

OR

SECTIONS 19—25.

BABOO BHOOPUT ROY, *Subordinate Judge*, BURDWAN.

The *gradual* payment of enhanced rates is objectionable, as it infringes the proprietor's indefeasible right to enhance at once, at least where the tenant enjoys the improvement. Progressive rent is allowed in case of land gradually reclaimed. But where the ryot has already occupied the land at less rent to the prejudice of his landlord, he should not be permitted to continue withholding the increase for a number of years.

Sub-occupancy rights.

Section 19, clause 3, explanation c. Objects to allowing the tenant of a ryot, who has a right of occupancy, himself to acquire such a right. It would be in another way to permit the partition of land and apportionment of jumma without the consent of the proprietor; *e. g.*, A lets out 10 bigahs of land to B, who sublets a portion to C for rent in kind. The occupancy holding of B is subsequently sold for its arrears and it is purchased by the proprietor. Here if the proprietor were bound to recognise the right of the under-tenant, he would be required to give effect to the partition and apportionment of the jumma, which could not have otherwise been done without his consent.

Appreciates "the proposition" to make the occupancy holding saleable for arrears. This has already become the law.

Section 20.—Guarding the property from sale in execution of a money decree, and also against mortgage by the tenant, protects it against his improvidence. This is equitable and just; yet, in the case of "draught" [? drought] or other casualty, the tenant may be under the extreme necessity of contracting a loan and the

creditor may not advance money without security. In such a case the provision in clause 8, far from being beneficial, would prove fatal. Suggests that mortgage of his holding for the purpose of raising money to discharge current rent may be valid, provided the mortgagee on behalf of the mortgagor pays the money to the landlord, receiving receipts for the same.

Clause (e).—Where ejectment is the result of a violated stipulation, compensation should not be given.

So far as the sale of the tenure in execution of a Civil Court decree is concerned, section 20, clause (*a*), is inconsistent with section 41, clause (*b*).

Definition of "landlord" in section 22, explanation 1—"No person is a landlord who has not a permanent transferable interest in the land of which the rent is payable to him."

The words "transferable interest" open to discussion. Certain persons have a qualified interest in property; *e.g.*, Hindoo females (widow or daughter) who enjoy for life and do not possess a right to transfer. The widow cannot apply for partition, as she has not a permanent transferable interest; but that is no reason for depriving her of just and equitable rent, and if she live long enough to allow a tenant to hold at unvaried rent for 20 years, a presumption may arise to the prejudice of reversionary heirs.

Others also possess a qualified interest, *e.g.*, trustees for life, Shebaits of idols, &c.

BABOO PROMOTHO NATH BANERJEE, *2nd Moonsiff*, Burdwan.

Section 19, explanation 3, clause (a).—Generally good, but open to objections and improvements. Conferring the right of occupancy on ryots holding immediately under mokuraridars and istemraridars is a valuable addition to the law, if these tenure-holders are not debarred from enhancing the rent paid by their ryots up to a fair and equitable rate.

Section 19, explanation 3, clause (c).—The position of a tenant holding under an occupancy ryot is no better than that of a tenant-at-will and any change would produce an increase of litigation.

Section 19, explanation 3, clause (h).—It is opposed to public policy to allow private contracts to override the law, and there is no reason why mere registration of a contract should turn the scale.

Section 20.—As regards transferability of the occupancy right, the Munsiff premises that tenures were inalienable before the time of the British, and Act X, by which the right of occupancy was created, was an invasion of the rights of zemin-

dars conferred by the permanent settlement; but it became necessary, for the protection of the interests of the ryot, to make such a provision, and the highest tribunal of the country has sanctioned the transfer of a right of occupancy subject to a particular custom. Section 20 would confirm this custom and make it universal; but as regards the two restrictions proposed in section 20 to the transfer of the right of occupancy, if they are to have retrospective effect, it will be a great hardship to the holder of decrees other than for arrears of rent, and to the mortgagees of occupancy rights. If it is intended to exclude existing contracts and decrees from the operation of these provisions, confusion will ensue in future litigation and indirect license be given to the ante-dating of mortgages.

If an occupancy right is not allowed to be sold in execution of decrees other than those for arrears of rent, there is a class of decree-holders who will be subjected to great loss and trouble, *viz.*, the co-sharers of a joint-holding. The Government Pleader says "the holdings of ryots are not unfrequently split up into several parts with joint liability to pay landlords' dues; one ryot is frequently required to deposit the rent payable by his co-sharers to protect his own share from sale. He can only recover the money thus advanced by a suit for contribution. The decree will be a Civil Court decree, and according to the Bill not enforceable against the jumma. Now the plaintiff in a case of this sort is not a professional money-lender; he felt constrained to advance his money for the preservation of his own interest. There appears to my mind no good reason for depriving him of his money."

As regards the prohibition to mortgage occupancy holdings, most of the arguments of the Commissioners depend on the presumption of collusion on the part of the ryots with their mahajuns, for the purpose of depriving their landlords of their just dues; but there may be *bonâ fide* occasion and reasonable ground for a ryot to borrow money, *e.g.*, at a time of famine and scarcity when a Bengal ryot has no alternative but to borrow for the support of his family, which is generally larger than that of one in better circumstances. And as Mahajuns of the

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present day will not lend on the ryot's mere promise, if the latter is not allowed to mortgage, he will be compelled to sell his jumma. Munsiff also refers to the Tuccavee advances, in which even the Government, though having absolute power to realise, thought proper to take mortgages of ryots' holdings.

Section 20, clause (e).—Experience has shown that arrears of rent are more easily realised by an order under section 52, VIII (B. C.) of 1869 (ejectment) than by all sorts of prompt and vigorous measures in the execution department. To allow ejectment for breach of any stipulation (only) would give too much independence and discretion to the ryot, who would be induced, under circumstances of inconvenience and probable loss, to commit a breach of some stipulation with a view to get rid of a holding. Munsiff points out that an order of ejectment under the above section, as explained by a current of decisions, does not permit of immediate ejectment, but must allow the ryot 15 days' time to pay up arrears, whereas a landlord cannot summarily eject a refractory tenant at will, but must sue after previous service of notice to quit. The present law should stand, and the compensation proposed not be granted.

Section 21.—The provision as to rent in kind would be acceptable to both landlord and tenant; and in the case of crops other than staple crops, and in the absence of contract, the "*minimum* rate" (? maximum) might be fixed at 25 per cent. of the average annual value of the gross produce.

B. AUGHOR N GHOSE, *Subordinate Judge* of Midnapore.

Section 20.—The occupancy ryot ought to be allowed to mortgage his holding. The prohibition against such mortgage, added to that in section 266, Civil Procedure Code, against the attachment of implements of husbandry and cattle required for agriculture, as well as against materials of occupied buildings, is likely to make it difficult for the ryots to obtain loans from *Mahajuns* on easy terms. Ryots often need to borrow for the maintenance of their families, purchase of seed, cattle, &c., and for payment of rent. This necessity becomes exceptionally pressing after a bad season.

The prohibition is not likely to secure the object aimed at, *viz.*, to prevent Mahajuns becoming by purchase the owners of occupancy buildings. When urgently necessary, the ryot cannot help borrowing,

and when badly involved in debt, the Mahajun or the landlord, or both, will obtain decrees against him. Should he pay the landlord, still he must, in execution of the Mahajun's decree, either go to jail or sell his holding either to the Mahajun himself or to some one else, for he will not be able to claim the benefit of the law of insolvency so long as he is in possession of his holding. A silly ryot may borrow money when he can help doing so, but the silliest ryot will think twice before he mortgages or conditionally sells his land. Occupancy holdings should be mortgageable and so saleable in execution of decrees passed on mortgage-bonds; but they should not be saleable in execution of simple money decrees.

The Subordinate Judge is further of opinion that fractional shares should be made transferable by sale, gift, or will, only to persons who have become co-sharers by inheritance and to no others. A similar provision exists in section 9, Act XVIII of 1873 (the North-Western Provinces Rent Act).

Section 22.—No enhancement of rent should be allowed on the ground that the prices of produce have increased, unless the increase has been effected by the agency or at the expense of the landlord. The more copious importation of foreign articles and the spread of civilisation have added to the wants of the ryot, and the only means of meeting those wants is the produce of his lands. Increase of population, too, implies an increase of burden on that produce. The facility for enhancement will, within a few decades, materially injure the ryots, if the 4th ground of enhancement be allowed to stand.

Section 25.—No abatement of rent should be allowed on the ground that prices of produce have decreased, unless the decrease has been effected by the act of the landlord.

Section 20.—Why should a right of occupancy not be made saleable under a Civil decree otherwise than for rent?

B. GOPINATH BANERJEE, *Sudder Munsiff* of Dinagepore.

If the occupant ryot be not allowed to mortgage his tenancy, Munsiff apprehends that "he shall be sold out and out by money-lenders," and more misery will befal the country.

Subordinate Judge, and *1st and 2nd Munsiffs* of Gya.

It seems unnecessary and improper to give a right of occupancy to ryots holding immediately under an occupancy ryot. It will create great confusion, and make it necessary to have a double table of rates.

Subordinate Judge, on the contrary, thinks that if the occupancy ryot be deprived of the power of alienating his right, it would be tantamount to saying that he had no occupancy right at all.

Section 20.—As to giving the power of transferability to occupancy ryots, ~~the Subordinate Judge, B. Matadin, and~~ the two Munsiffs, B. S. S. Sahae and B. M. L. Ghose, agreeing with the present Chief Justice, that no measure should be passed which would be unpleasant or injurious to landlords unless some solid advantage accrues thereby to the general public, are of opinion that the measure is likely to prove most injurious to the best interests both of landlord and tenant. In consequence of the power of alienation given to Zemindars, almost all the estates created at the time of the permanent settlement have passed into the hands of Mahajuns, who are very rarely good landlords; or the smaller ones have been swallowed up by the larger ones, thus bringing misery and ruin on the landed gentry of Bengal and Behar. The same must be the case with occupancy ryots at no very distant date if they are clothed with the free power of alienating their jotes. Are therefore of opinion that the holdings in question should not be made saleable even in execution of decrees for arrears of their own rent.

Subordinate Judge objects that it is difficult for the Mahajun or Zemindar to keep an eye upon the produce, that the ryot may take it away. When the latter understands that his holding is not answerable for his debt, he will endeavour to remove his crop, and it will be difficult for the Mahajun or Zemindar residing in different villages to realise his dues.

If it is said that the Zemindar's facility for realising his rent will be lost, the reply is, that the Zemindar is entitled to a share of the produce only, and if any portion of his decree remains unsatisfied after the sale of the produce, it ought to be held that the assessment of rent is not fair and he ought not to recover in full. He ought to be vigilant in looking after the produce, but should the ryot appropriate the whole of it without paying rent, he ought to be ejected.

Subordinate Judge does not know whether the right of transfer existed before the English rule, but it has certainly prevailed since that rule, at least in most parts of Behar, and it would be hard to legislate against it.

It is not necessary for the improvement of the ryot's condition that he should have the power of parting with his jote, a power wholly unknown to the natives before the advent of English rule. They simply want a fair assessment of rent and remission in seasons of drought and inundation.

A claim for remission under such circumstances, is fair and equitable, for whatever difference there may be in philosophical theories as to *rent*, the definition well understood by all the agricultural classes is, that it is a share of the produce of the land. But if the land does not produce any thing, through no fault of the ryot, the Zemindar ought to get no share. Should it be said that the profits of a favorable season should enable the ryot to meet his landlord's demand in a bad season, it might be answered that the Zemindar's demand, like that of the Government, is not permanently fixed. He is deemed entitled to share in the profits of the ryot's labour, and his demands increase with the improvement of the land. Therefore it cannot be unjust to compel him to remit a portion of his rent when the country is visited by a general calamity.

If, however, the power of transfer is not given to the occupancy ryot, the power of ejectment should be restored, but it should be capable of being exercised only after default in regard to four instalments of rent, and the time for satisfying the decree should be 30, and not 15 days. When mass education makes sufficient progress, it will be time enough to give occupancy tenants power to transfer their holdings. They do not need this power for the purpose of getting a supply of seed and food-grain. This is got by both occupancy and non-occupancy ryots by verbally pledging the produce of their fields as security. Where mortgage and sale of occupancy holdings is allowed by custom, they are mortgaged and sold to squander away the proceeds in marriages and shradhs, seldom or never for improvement of holdings or increase of crop. The Zemindar's rights, therefore, should not be encroached on, and the question of transferability should be left to the progress of time. Where occupancy rights are transferable according to the custom of a district or part of a district, they should be left untouched under the provisions of section 4 of the Bill.

Subordinate Judge, who has served Government 25 years and in every part of the province except Purneah, says that his experience bears out the allegation that all the ryots take an advance of seed and food grain from the mahajuns who, as well as the zemindars, look to the right of occupancy as their security. And it is on this understanding that the zemindars defer the realization of one year's rent to another year. If the occupancy right is not made saleable, the mahajun or zemindar will look to the produce, and the ryot and his family will starve.

If a right of selling his holding is given to the occupancy ryot, a right of pre-emption ought to be given to the Zemindar, so that in extreme cases he may prevent the holdings going into the hands of a rival Zemindar, who may ultimately compel him to part with his zemindary. An occupancy ryot ought to get compen-

Subordinate Judge agrees. And if it be said that the zemindar may learn suddenly on coming into Court that his ryot's holding is being sold and may not have sufficient money

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to purchase it, the reply is that he may pay the earnest money now and the rest afterwards.

sation for real improvements; but those in sections 29 and 30 are not real.

Section 21 will work hard upon those Zemindars who have invested capital on the understanding that they will get $\frac{9}{10}$ths of the produce. See no justification of this encroachment on the Zemindar's rights, nor do the ryots need this gratuitous favour. It may, however, be enacted that where rent is payable in kind, the zemindar's share shall be deemed to be one-half, unless the contrary is proved.

It is not correct to say that "the Behar system is a Metayer system with most of its worst features." A Zemindar has to spend a good deal in throwing up earthworks and making reservoirs before he can expect any crop in those places where the bhowlee tenures mostly prevail. They also give *takavi* to ryots and spend hundreds and thousands in establishing the ryot's rights to use water of a particular channel, *pyne*, or reservoir. If any agricultural improvement is made by the Zemindar of Behar, it is where the bhowlee tenures mostly prevail.

Section 23, (b and c).—In some parts of the districts of Behar, the Government revenue is more than one-fourth of the gross produce. Besides, in making a rule as to the zemindar's share, his liabilities should be considered. He seldom succeeds, however vigilant, in realising more than 75 per cent. of the rent due by his ryots, out of which he has to pay collection charges (10 per cent.), embankment cess and zemindari dâk cess, say, 5 per cent. He has also to obey the Collector's call for statements which involve expense. He should get *one-third* of the gross produce, or the rate of rent payable by occupancy ryots should be fixed at 15 to 20 per cent. less than that of non-occupancy ryots. The greater the margin allowed to the former, the more the inducement to sublet. The second rule will protect the occupancy ryots as well as their korfas; the first, the occupancy ryot alone.

Section 22, illustration (c) of ground 2 seems very vague. Where a plot stated to contain a certain number of bighas is let to a ryot at a fixed annual jumma and is found greater in quantity than what is stated in the pottah, the ryot is not liable to pay rent for the excess as the entire plot within given boundaries was demised

at a fixed jumma. It would only be fair and equitable to demand enhanced rent where, besides the number of bigahs, the rate per bigah is distinctly entered in the pottah. In the latter case, the error would be generally the result of mistake or fraud on the part of the zemindar's amlah, of which the ryot should not be allowed to take advantage.

Section 23, clause (e).—Why should the enhanced rent payable by the ryot be reduced by the cesses paid by him, seeing that the landlord pays the same cesses?

Baboo A. C MITRA, *1st Munsiff*, Patna.

Section 20 (*b*) objectionable, as tenant may put in a man of straw; and zemindar having no house to distrain may lose at least one year's rent when a jote does not fetch a value equal to one year's rent.

Section (21).—The legislature ought not to interfere with private contracts.

Baboo KEDAR NATH ROY, *Additional Munsiff*, Patna.

The definition of "land" (Section 3) makes it applicable exclusively to *horticultural* and *agricultural* lands when held by a ryot only; when it is held not by a ryot, *i.e.*, by the holder of more than 100 bigahs, it is not a tenure, even though held for the purposes above specified. There are innumerable jotes of more than 100 bigahs which are in their inception and development ryoti (*i.e.*, for agricultural and horticultural purposes). If section 11 would not include them, nor section 19, how are we to classify them?

As regards holdings called "ootbundy," in which the ryot pays for so much of his holding as he actually cultivates, he acquires a right of occupancy upon the entire holding (20, Weekly Reporter, page 329). Strictly speaking, he cannot be said to pay rent for such portion as he does not cultivate. But under the wording of the section [19] he would not acquire a right of occupancy to the entire holding.

A holds and cultivates land for two years; for the next 10 years he pays rent, but instead of cultivating it himself sublets the land. Under the *illustration* (section 19) he would acquire a right of occupancy; but this would be against several rulings of the High Court.

Under explanation 3 a ryot would not acquire a right of occupancy under a mortgagee or ticcadar, if these were neither

mokuraridar, *istemraridar*, nor tenure-holder. This would be against practice and law.

Explanation 3, clause (c), creates occupancy right under occupancy right, and will give an enormous impetus to sub-infeudation and bring in the cottier system against which the Commissioners propose to guard.

Is section 21 (read with section 83) to have retrospective effect? In that case many landlords in Behar will be deprived of $\frac{1}{16}$th of their revenue. Seventy-five per cent. of landholders now get $\frac{9}{16}$ths of the grain from their ryots. The commission, starting with the broad rule of equity that "existing rents should be taken as the basis of operation," yet fix a limit to enhancement which falls below the existing rate.

Section 23, clause (a), changes the old law and gives the ryot half the increase, if it is due to natural circumstances [causes?] Is there any equity in this?

Concrete case.

Section 23, clause (c), read with Sections 9 and 11, would show that the law of enhancement appears to be not workable in certain cases. The following concrete example is given by a correspondent of the *Hindu Patriot*. A, a zemindar, creates a tenure at the yearly rental of Rs. 500 in favour of B; and B in favour of C, an under-tenure holder of the second degree, at Rs. 700; and C in favour of D at Rs. 1,000. D's gross collection from ryots being Rs. 1,500, D enhances the rent and collects Rs. 2,000. Deducting collecting charges (10 per cent.) from this, there remains (2,000—200)=1,800, of which 30 per cent. would be 540; which being deducted, he would pay (1,800—540)=1,260 to be paid as enhanced rent to C. The effect would run up the scale as given below, leaving A's jumma without any enhancement.

	Gross collections.	Charges of collection (10 per cent.)	Balance after deduction of collection charges.	30 per cent. profit.	Net balance payable to superior holder.	Remarks.
	Rs.	Rs.	Rs.	Rs.	Rs.	
D.	2,000	200	1,800	540	1,260	Enhanced rent to C.
C.	1,260	126	1,134	340*	793	Ditto to B.
B.	793	79	714	214	500	Ditto to A.

* Omitting fractions.

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Section 23, clause (e)—Inequitable and inconsistent with sections 7 and 21 of the Road-cess Act X (B.C.) of 1871.

BABOO RAMPERSAD, *Subordinate Judge* of Shahabad.

The provision making occupancy rights transferable is calculated to confer a great blessing on the ryots. They will now regard the tenure in the holding as their own, and will with the greatest pleasure make improvements on the land calculated to increase its productive powers, and will invest capital in the land. As regards the objection that, if declared transferable, occupancy rights will soon find their way into the hands of mahajuns, bankers, indigo-planters, &c., he would suggest a special provision restricting the power of scale by occupancy ryots to an actual and *bonâ fide* cultivating ryot only, and none others.

BABOO DWARKANATH BHATTACHARJEE, *1st Munsiff*, Arrah, Zillah Shahabad.

The words "and paid rent for the same" in section 19 appear open to objection.

If such payment be made a condition precedent to the growth of a right of occupancy, it might be inferred that there would be no such right in the excess land in the holding of the tenant, and that there would be no necessity for retaining the *second* ground of enhancement (section 22). An exception should be made as regards *excess land* as well as lands reclaimed in the Sunderbuns, and those which are designated in Behar *bunhattee* (lands cleared for cultivation) for which no rent is charged at the outset.

The land-owners strongly object to the provisions of section 20 and try to maintain that a right of occupancy is not transferable in any way. But such rights are sold every month at the instance of the zemindars themselves in execution of rent decrees where they have the option of bidding. At private sales, &c. (clause *b*), they would have no hand at all. It would be hard to dispense with their consent. For instance, some refractory and troublesome ryots may step into the shoes of the vendor of occupancy rights, foment discontent, form the nucleus of a foul combination against zemindars, and ultimately give birth to an agrarian disturbance. Free alienation is no doubt the current policy of the English law, but may not suit the circumstances of India.

Section 22.—The words "prevailing rate" and "in the vicinity" should be explained in order to set at rest far-fetched constructions and captious objections.

If by the "Collector's Table of Rates" is meant one prepared by *Ameens*, the remedy will be worse than the disease. The scheme proposed by Mr. Justice Field, and approved by the Chief Justice, would do well and answer the end in view—a commission consisting of three persons, one chosen by the ryots, one by the landlord, and a third by the Government. Side by side with the Table of Rates should be a Register of Tenures admitted to be free from enhancement, *e.g.*, the Goozashter tenures of Shahabad.

MY. MAHABUT ALI and BABOO S. C. GHOSAL, *1st and 2nd Munsiffs* of Goalundo, Zillah Furreedpore.

Section 20.—The restrictions as to mortgage and sale in execution of other than rent decrees should be removed; they will not only be evaded when necessary and thus defeat the end in view, but impose hardship on the ryots by creating difficulty in the way of getting money when wanted.

BABOO KOYLASH CHUNDER MOZOOMDAR and BABOO RUSSICK CHUNDER ROY, *1st and 2nd Munsiffs* of Mulfatgunge, Zillah Furreedpore.

Section 3, clause (*d*), puts another obstacle in the way of the zemindar or the rent receiver. If he can succeed after all in enhancing the rent of a ryot, there is no reason why he should not be allowed to get the enhanced rent when he is entitled to get the same, instead of in five years at the discretion of the Court.

BABOO GIRINDRO MOHUN CHUCKERBUTTY, *2nd Munsiff* of Thanga, Zillah Furreedpore.

Section 19, explanation 3 (*a*).—Sees very little objection to the ryots of istemraridars or mokuraridars gaining a right of occupancy; for the right of those two classes being very ancient, permanent and hereditary, they have generally long merged into the class of middlemen, and it is but fair that their ryots should acquire the right of occupancy.

Section 19, explanation 3, clause (*c*).—The proposal to confer the same privilege on the tenants of occupancy ryots seems objectionable in every way, such a right having never existed and having never been recognized by any law. It would sacrifice the interest of a large class of ryots who from many causes, after having acquired the right of occupancy, have been obliged to sublet their lands for a long time, reserving their right to take them back on a change of circumstances.

Section 19, explanation 4, clause (*h*).—It is a useful provision, and on the whole more to the advantage of the ryots, that landlords by exacting a written contract to that effect can prevent a ryot from acquiring a right of occupancy. If such

contract be treated as null and void by any statute, it would not only interfere with a proprietor's independence in dealing with his own property, but also induce landlords to grant leases for shorter periods and exercise their rights of re-entry to the greatest disadvantage of the ryots.

Section 20.—If an occupancy holding be transferable by sale or gift, sees no reason why it should be exempt from sale in execution of any decree other than for its own rent, or why it should not be mortgaged. The grounds on which these restrictions are placed, *viz.*, the ryots' pressing necessities, &c., would also go to restrict its transferability by private sale or gift and with greater force; for as the necessity cannot be avoided, and the holding cannot be mortgaged or taken in satisfaction of a debt, the ryot will convey it by an out-and-out sale to the mahajun (with a verbal agreement to re-convey), for a less consideration than he does it now when its transferability is only limited by the zemindar's pleasure. Experience teaches us that even now, with his power of limited transfer, the ryot gets all the advantage of it if he and his alienee can pull well with the landlord; but if he acts against the landlord, he gets nothing in return. His interest, therefore, is to look to that of his landlord. The law, therefore, should remain as it is, with this reservation, that if a transfer is made which the landlord does not recognise, it may not involve forfeiture and ejectment at the suit of the landlord. If transferability be deemed expedient, it is highly inexpedient to limit it as proposed in the Bill.

Clause (*e*).—It is a wholesome rule by which ejectment for non-payment of rent is done away, and allowed for breach of the terms of a contract (which stipulates for such ejectment). Discretion should, however, be vested in the Courts to act according to the equities of the case, and decree ejectment only where the landlord cannot be compensated in a pecuniary way. This discretion would also afford a remedy when it becomes clear that the ryot was not in an independent position to contract with the landlord.

Section 21.—The limit here laid down is a general rule and should never be exceeded.

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Section 22.—Equitable with one exception, *viz.*, the first ground of enhancement. Does not see why, in the absence of any contract, a tenant who is paying less rent than his neighbour should be made to pay an equal rent. The inequality may be generally traced to the landlord who alone is responsible for it. He may have been imprudent, or he may have accepted a *salami* or had other special grounds for accepting a lower rate. Or he may have been less selfish than his neighbours. Or the neighbouring ryots may be holding under a tenure-holder who, having himself given a large *bonus* to the proprietor takes it out of the ryots by a higher rent. Now, as the conditions vary, why should they all be made to pay at the same rate? He would, therefore, restrict thisground of enhancement to cases where a written contract existed to that effect, and, as a general rule, would make all occupancy ryots pay at the customary or pergunnah rate, (regard being had to the old regulations on the subject) to be determined by proper authorities specially selected for each pergunnah.

In this connection he objects to the double procedure provided in Chapter XV unless it is intended to give landlords ample facilities for enhancing rent. It would be better to let the present procedure alone, and have authoritative rates determined by the revenue authorities or selected officers working with the district officers. These would take the place of the old pergunnah rates which have now become almost impossible to trace, and would be gladly accepted by the ryots.

BABOO JODOONATH ROY, *Sub-Judge.*
BABOO KEDAR NATH MOZOOMDAR, *2nd Sub-Judge.*
BABOO KEDAR NATH CHATTERJEE, *1st Munsiff*
BABOO JOGENDRO NARAIN DEB, *2nd Munsiff,*
Midnapore.

Section 19, explanation 3, clause (c).—No right of occupancy should be acquired by a ryot holding under a ryot having a right of occupancy.

Section 20, (a and d).—A right of occupancy may be allowed to be sold in execution of all sorts of decrees, and not merely of rent decrees; and it is desirable that a ryot having a right of occupancy should not be prevented from mortgaging his tenure.

The effect of the proposed restriction will be that ryots will have to sell off their tenures when they could have saved them by mortgage, and no mahajun will come forward to accommodate the ryot with a loan in case of necessity.

Section 20 (c).—The last clause should be expunged, as it is not equitable that a ryot who has been guilty of breach of contract should be allowed compensation.

The present law relating to enhancement of rent (sections 14 to 18, Act VIII, B. C., of 1869) is regarded by the highest judicial and revenue authorities as absolutely unworkable, and zemindars have *almost* given up bringing suits for enhancement; but as enhancement must go on, and the door of the law is practically closed, other, though not very laudable, ways have been found out of reaching that end. The *first* is to bring a suit for enhancement under colour of a suit for arrears of rent, to obtain an *ex-parte* decree, and to use it as *res judicata* in subsequent suits. The *second* method is to bring a suit for ejectment, and, if the matter is not compromised by the ryot, to worry him with litigation until he consents to enhancement. The *third* method is to sue him for arrears several times in the year, as each instalment falls due; and so to weary him out and force him to come to terms. The inducement to these indirect methods of enhancement will be much diminished by the abolition of the notice of enhancement which caused more than half the difficulties in the way of legal enhancement.

Section 22, clause (1).—For "in the vicinity," he would substitute "in the surrounding neighbourhood" as in Act (B.C.) VIII of 1879.

In clause (3) for the words "when the rent was fixed or at any subsequent time," should be substituted "when the rent was last fixed, or at any subsequent time within the last 10 years."

The first alteration would make the meaning more precise, and the second would obviate many practical difficulties.

In clause (4) the same amendments: and a further addition "provided that such higher rent does not bear a higher proportion to the rent of the ryot as last fixed than the normal price of produce, at or about the time of the suit bears to the normal price of similar produce which prevailed at the time when such rent was last fixed." This will do away with the similar provision in section 23, clause (*b*).

Section 23, clause (a), will be unworkable in practice, and it will be ex-

tremely difficult, if not altogether impracticable, to find out the data for the apportionment of the unearned increment. Take two instances.

A takes a lease of land protected by low embankments from the depredation of salt-water at ordinary spring tides. The Government then erects higher embankments, and completely protects the land even against cyclone waves. Now it must be said that the productive power has increased. But high embankments sometimes have a tendency to obstruct drainage, and intricate questions will arise as to the utility or success of the work. How is the extent of immunity [from cyclone waves] to be determined in order to divide the increment between landlord and tenant? cyclone waves occurring at irregular and uncertain intervals.

Take another case, that of a lessee of jungle land exposed to salt-water incursions. The tenant clears the jungle, and the Government erects an embankment which protects the land from salt-water. Here the productive power has increased, but it is due to the efforts of the tenant as well as that of the Government; and, so far as it is due to the latter, the landlord has a right to share in the increase: but how is the increase to be ascertained?

Section 23, clauses (*c*), (*d*) *and* (*e*).—Agrees with everything here, except the provision that staple crops only shall be considered, which will cause much hardship and work in a way not compatible with justice and equity. Would suggest a short clause enacting that "statements in the administration reports of the Government of Bengal, regarding the quantity, value, and character of the export and import trade in British India shall be admissible as evidence without introductory proof." The large expansion of the export trade of the country, and the enormous influx of silver, are the principal causes of the rise in prices of commodities and will always form potent factors in determining whether there has been a rise or not.

The limit of 25 per cent. of the gross produce fixed by clause (*c*) is too low. It will *first* prejudicially affect present rents where the proportion is higher, and cause much grumbling and discontent; *secondly*, tend to injure contract relations; and, *thirdly*, immensely increase the friction

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between landlords and tenants. It is not to be found in Act VIII, B.C., of 1879, and is supported by very little authority or argument. Even the Emperor Akbar's settlement was on the average annual value of one-third of the medium produce. Subsequent Sovereigns must have raised the proportion considerably for, at the time of the permanent settlement, the rent represented 60* per cent. of the gross produce (*vide* Mr. Shore's minute of 8th December 1789). The proposed limitation will stop all enhancement in many districts although it might equitably have been demanded.

	Parts
*Zemindars ...	45
Under-renters ..	15
	60

Section 20.—This section forbids the mortgage of an occupancy right, or its sale in execution of a money decree. This limitation of the transferability of a tenure is extremely undesirable in the interests of the ryot. Throughout almost the whole of the Lower Provinces, the ryot already enjoys the right by custom, and mortgages of jotes are matters of every-day occurrence. It is only the difficulty of proving the custom, when maliciously denied by the other party, that makes it necessary for the Legislature to declare that it is saleable without custom. To declare the tenure transferable would tend, not only to raise the status of the ryot, but also to promote his comfort. The limitation-clause will take away a right which the ryot already enjoys. Considers the views of the Lieutenant-Governor as expressed in paragraph 9 of Mr. Reynolds' letter No. 945, dated 12th April 1877, to be consistent with what is occurring every day in the Mofussil and His Honour's arguments unanswerable.

A large portion of the ryots find it necessary to borrow at the cultivation season for their maintenance, and to them the limitations will prove an unmitigated evil. Moveables the common ryot never has, that are worth pawning or selling; and agricultural implements are not saleable under the Civil Procedure Code in execution: and if deprived of the power of mortgaging his land, he will not be able to get a loan at any interest, however high. It has been stated by a mahajun that no mahajuns would under the proposed change advance paddy loans to any ryot, and the result would be starvation to a third of the population of Contai for four months of the year. The result is not

greatly over-estimated. No better or stronger reasons for the abolition of these limitations can be given than those of the Lieutenant-Governor in paragraph 7 of Mr. Mackenzie's letter No. 3060, dated 11th December 1877, (*Calcutta Gazette*, 8th January 1879, Supplement, page 48).

BABOO MENU LALL CHATTERJEE, *Subordinate Judge*, Moorshedabad

Section 19, Explanation 3, Clause (*a*).—Will have the effect of raising the status of mokurcridars and istumraridars who, when not actual cultivators, are mere vampires upon the land.

Clause (*c*).—There should be no right of occupancy by sub-tenants.

Section 20.—Occupancy rights ought not to be made transferable except with the landlord's consent obtained in writing.

The limitations ought to be retained.

Clause (*e*).—The fear of ejectment facilitates collection of rent. Zemindars should be empowered to eject proved robbers, men of bad character, and indolent cultivators for the good of his ryots, and also to eject persons found in possession of small fragments of jotes. Compensation should not be granted when the breach of contract on the part of the ryot is wilful.

Section 21.—Proportion not unfair, but no distinction between staple and other crop need be made by the Board of Revenue. It is a restriction to cultivation and an unjust interference with private contracts. Leave the proportion for adjustment by the parties who understand their own interests better than the legislators.

Section 22, Illustration (*c*).—Will prove prejudicial to the interests of the zemindar, for fraud is often "perpetuated" [perpetrated ?] in collusion with the gomashtah and by imperceptible encroachments on fallow lands.

Section 23, Clause (*a*).—A landlord should have the full benefit of improvement by natural causes, as a ryot is not co-proprietor.

Clause (*c*).—To strike an average for any number of years would be practically difficult "owing to intervening causes affecting the fertility of the soil."

Clause (*e*).—It is not equitable that the zemindar should be made to grant deduction on account of cesses.

Section 19, Explanation 3, Clauses (*c*) *and* (*d*).—Creating occupancy rights under occupancy holders and also in *khamar*, *nijjo'e* and *sir* land, not approved. On the one hand, occupancy ryots would not like to be encumbered with similar tenants under them; on the other, the provisions will unnecessarily trench upon the zemindar's rights.

Explanation 4, Clause (*h*).—Allowing written contracts to operate against the acquisition of occupancy rights, not approved. The object should be to encourage occupancy rights. Nothing has a greater tendency to create unrest in ryots than a sense of insecurity of tenure.

Section 20.—Approved, except in regard to compensation in case of ejectment for breach of stipulation in clause (*e*).

Section 22, Illustration (*c*).—Bearing on *first* ground of enhancement, distinguishing between an ordinary occupancy ryot and one under such, not approved. If tenants under occupancy holders are to be at all allowed such rights, then the distinction must seem arbitrary.

Illustration (*c*).—On ground *second*, not approved. There is no reason why landlords should not be allowed enhancement for excess land, simply because the entire area is comprised within the boundaries of the lease, while in the contrary case, section 25, clause (1) entitles ryots to abatement of rent for short area even though the boundaries should be correct.

Section 23, Clauses (*a*), (*b*) *and* (*c*).—Rules and limits of enhancement too many and inconsistent, and as if they were not enough, section 98, clause (*b*) and section 105, clause (*a*) introduce the old vague standard of "fair and equitable rates." No doubt it is extremely difficult to lay down a simple and uniform rule of enhancement; but it will not be to the advantage of the parties to render a confused subject still more confounded by a set of rules and checks not in harmony with each other. Though the Bill is replete with illustrations, not one is given to show how the various rules and checks are to be worked, or what would be the result of their operation.

The *first* ground should not be clogged with the limitation of clause (*c*), section 23. The principle of this ground of enhancement is to equalise the rate payable

by the ryot with that payable by the majority of tenants in the vicinity; but the operation of the limit will, without any reason to justify it, produce an inequality of rates.

With regard to the third and fourth grounds of enhancement (increase of productive power, or price of produce), it is of doubtful fairness whether any uniform limits or checks of the sort described in clauses (*b*) and (*c*), section 23, should be imposed upon them after the fundamental mode of appropriating increment laid down in clause (*a*). They will equally affect both conditions of enhancement, *i.e.*, whether the increase be produced by the landlord's agency only, or by independent causes, and the rule in clause (*a*) will be reduced to an absurdity, and a uniform standard brought about whatever the cause of increase in productive power or price of produce. Regard should be had to the variety of conditions of ryots and diversity of circumstances. A ryot who has five adult sons to aid him in cultivation, and another who does the business by hired labour, albeit both occupancy tenants of the same class, are by no means in the same position. A general rule or limit, elastic within reasonable bounds, would meet the case, *e.g.*, by providing a power of reduction by a small proportion, say one-third of the excess rent leviable in case of ground (1) according to the prevailing rate, and of the increment in case of grounds (3) and (4) under the mode of appropriation laid down in clause (*a*), section 23. The proportion might vary from one-third to one-sixth, or one-twelfth according to circumstances. Thus, the vagueness of the old method would disappear, as well as the confusion unavoidable in a multiplicity of checks.

Section 23, clause (*d*) making enhancement gradual, approved.

Clause (*e*) entitling ryots to deduction for road cess, &c., not fair.

Baboo Shambhu Chunder Nag, *Munsiff* of Pubna.

Section 20.—The proposal to attach certain fresh incidents to the right of occupancy, has caused general dissatisfaction among the landlords, as being a breach of the permanent settlement. Even those who enjoy the right hardly appreciate it, as it has so many restrictions. There should be an unrestricted right of transfer,

if the holdings are to be made really valuable.

Section 22, &c.—The clear explanation of the grounds of enhancement, the doing away with the notice, and the fixing of the occupancy ryot's rent at a maximum of one-fourth of the average annual value of the gross produce have met with general acceptance; but the checks proposed on enhancement should not be made a matter of legislation, but left to the discretion of the Courts.

No practical objection to conferring the right of occupancy on *mokuraridars* and *istemraridars;* but the sub-occupancy right referred to in clause (*c*) of explanation 3 (*a*) of section 19 does not appear to exist in Bengal, or to have been contemplated in Act X, or Bengal Act VIII, and would bring in complications.

The right of ejectment for arrears of rent should not be done away with, where stipulated for by contract, as it is a valuable security possessed by landlords for their rents, and is also a check on refractory ryots whose number is increasing daily.

The system of authoritative local rates is likely to be accepted as a satisfactory settlement for all classes of resident cultivators.

BABOO JUGGOBUNDHOO GANGOOLY, *1st Munsiff* of Bogra.

Sections 18, 19 and 20.—The creation of a system of sub-infeudation will in a manner stop the increase of sub-infeudation by the re-action which may be produced by forcing up the rate of rent to such a point as would make the tenure less valuable. The evils of sub-infeudation would thus be prevented.

Sub-occupancy ryots under occupancy ryots are in existence, and hence there can be no objection to legislating as to their status. The effect would be to improve the land.

The occupancy tenure should either not be made transferable at all, or it should be made fully transferable to all intents and purposes. Transferability under restriction lessens the value of land.

Ejectment should follow in case of ryots' making default voluntarily and purposely, which circumstance may be inferred from the fact of default being for a certain number of years or for a certain period.

BABOO LOKE NATH NUNDY, *2nd Munsiff* of Bogra.

Section 19.—If the sub-lessee acquires a right of occupancy under an occupancy

ryot, the latter must be looked upon either as a mere tenant-at-will, or as an under-tenure holder. Now we cannot call him an under-tenure holder, for his holding cannot be put to sale in execution of any decree of the Civil Court. Therefore, he must be a tenant-at-will, and as such liable to eviction in spite of his having been in peaceful possession for the last four and twenty years or upwards. But the case is otherwise with the sub-lessee, who having once acquired a right of occupancy will be entitled to sublet his land in his turn to a second grade of sub-lessees, who, although the actual cultivators of the land, and therefore mostly in need of the right of occupancy, will be precluded from acquiring the same.

Section 20.—Ryots who have already acquired a right of occupancy will be entitled to transfer their holdings by private sale; but those who have yet to acquire such a right will meet with opposition from their landlord, who will be very careful not to keep any land in continuous possession of any one ryot for 12 years, or will let out lands on leases duly registered containing express stipulations to the effect that a right of occupancy shall not accrue. So far from getting the benefit of transferability, they will be even debarred from acquiring the right of occupancy. It would also tend to destroy good feeling between landlord and tenant.

BABOO MOTI LALL HOLDAR, *Munsiff of Shahzadpore, Zillah Pubna.*

Section 19.—To vest *korfa* ryots (sub-tenants) of occupancy ryots with the right of occupancy, would be to give them a new right altogether. They are merely tenants-at-will. In an ordinary occupancy right holding, no two persons should enjoy such right at the same time.

Written contracts should not be allowed to interfere with the growth of a right of occupancy, and contracts detrimental thereto should be declared void. Clause (*h*) of explanation 4, section 19 should therefore be expunged, and it should be enacted that "no contract shall debar a tenant from acquiring a right of occupancy."

Section 20.—Is convinced that the only way to better the condition of occupancy ryots is to make their tenures transferable, and thereby to make their holdings valuable properties. But the restriction proposed to this right will tend to deteriorate

the said value and make the condition of the ryots worse. For when a ryot sees that, though he can sell the entire holding, he cannot mortgage or sell off a portion, he will be obliged to sell the holding for some trifling necessity without a chance of getting it back. To guard against purchase by mahajuns, the Court could regulate the bidding in execution sales. No amount of legislation could teach ryots to be frugal and saving.

Clause (*e*).—Ejectment for arrears has very properly been done away with, and any contract stipulating for it should be void.

Section 21.—Provisions as to enhancement of rent in kind, not inequitable; a high proportion has been properly fixed with regard to staple crops.

Section 19, explanation 2.—If a person having no right, *e.g.*, a trespasser, lets out land and if 12 years are spent in litigation by the rightful owner, who eventually regains possession, the latter will not be able to dispossess the tenant, who has meantime acquired a right of occupancy. This will be a great hardship to the rightful owner.

BABOO UMA CHURN KASTOGRI, *1st Subordinate Judge*, Comillah, Zillah Tipperah.

Section 19, explanation 3.—In most districts it is customary to let plots of land, the rent of which is paid in money, as well as in kind, or wholly in kind. The latter varies according to the annual produce, and the tenant is protected from enhancement (2 Allahabad, 301 Full Bench, 4 W. R. 23; 8 W. R. 170). Such a tenant should have a right of occupancy, and be entered in this classification.

BABOO ACHHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore.

Explanation 4 should include a tenant who holds land in lieu of wages, *e.g.*, a chowkidar or paik, who thereby acquires no right of occupancy.

Section 19, (*a*) *and* (*c*).—It is true that the country will not be improved till the tenant acquires a permanent right; yet by the subdivision of tenures and the growth of such rights under a mukurraridar and even under ryots having occupancy rights, the landlord is reduced to a mere annuitant and regards these provisions as encroachments on his rights, the more so as the Bill does not provide corresponding privileges as a counterpoise to these infringements. Suggests some easy means of recovering arrears, such as is provided by Act XI of 1859 and Regulation VIII

of 1819. This seems to have struck the Commissioners (see page 82, para. 163, also page 61, para. 123). An easy means for the recovery of arrears will not only do away with a part of the landlord's machinery of paiks, patwaris, &c., but will also put a stop, to a certain degree, to *abwabs, mathat* and other illegal cesses, which so much harass a tenant.

Section 19, explanation 4 (*h*).—If certain concessions be made to the landlord, he may be deprived of the right of preventing, by contract, the acquisition of occupancy rights.

Section 20.—This section is protective, and its effects will be salutary.

Section 21.—This section effects a certain class of mahajuns, whose chief dealing lies in letting the land in *bhag-jote* and advancing paddy.

BABOO KARTIC CHUNDER PAL, *1st Munsiff* of Nelphamaree.

A person who has more land than he requires lets it to another, keeping a margin of profit to himself. The more this process goes on, the greater burden comes down on the cultivating ryot. So the custom of sub-letting is admittedly injurious to ryots. Some of the provisions of the draft Bill do not discourage this ruinous custom; but others do. Few ryots will acquire a right of occupancy if its course can be checked by registered contracts, and landlords will take good care to let land for a term, or year by year. If this custom of sub-letting be retained at all, it will be desirable, (1) that landlords sub-letting land do not get rents at higher rates than those of the Collector's Table; (2) that ryots cultivating land for more than 12 years should acquire rights of occupancy, whether or not his agreement is for a term, or year by year, and whether or not his contract debars him; (3) that the acquisition of such right be restricted to the *actual* cultivator of the *whole* land let to him by *single* demise; (4) that a tenant who sub-lets *even a part* of his holding shall not acquire a right of occupancy over any portion of such holding.

If a right of occupancy be made transferable, it will be a new encroachment on the zemindar's right. A right of occupancy means a right to *occupy*. A ryot has cultivated for more than 12 years, he can hold on and cannot be ejected. Sale is quite a different thing and imports a

superior right. To give such a right to an occupancy ryot is to remove the difference between him and a tenure-holder. It seems an anomaly that the owner of a right of occupancy shall be able to sell it, while it is not saleable in execution of a decree other than a rent decree. A zemindar will be forced against his will to have bad ryots; his enemies will get another means of harassing him. Ryots will be tempted to be improvident and unthrifty. Mahajuns will lend money freely, and interest at exorbitant rates will accumulate. The reasons which induced the Commissioners to take away the power of mortgage apply to the power to sell.

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CHAPTER IV.

SECTIONS 26—31.

OF RYOTS WHO HAVE HELD LAND FOR THREE OR MORE, BUT LESS THAN TWELVE YEARS.

Objects to investing such ryots with a right of occupancy.

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan

[All the reasoning of this gentleman against the provision in section 28 for "compensation for disturbance" is based on a misconception of the meaning of the word "disturbance," which he regards evidently not as referring to disturbance of possession, but as equivalent to *rioting*. Its utter irrelevancy renders it quite unworthy of being re produced here.]

Objects to compensation for improvements where these are made without regard to the terms of the ryot's contract, and of his own accord and for his own benefit. He gives an illustration from the case of a *house* supposed to be altered by its tenant, which he alters to suit his convenience, destroying a staircase, planting a garden, &c. Is he entitled to compensation? The contract was to keep the land or the house in the same state as it was at the time of the agreement.

Section 29.—Of the six cases in section 29, compensation may be given in those described in clauses (*a*) and (*f*); the improvements in clauses (*b*), (*c*) and (*e*) are so rarely made by the tenant that the provision is unnecessary. The improvement in clause (*d*) must abide by the terms of the agreement. He has no claims against the landlord for any voluntary improvement. Chapter IV should be struck out of the Bill.

Section 31.—Objects also to the concession of such a ryot's claim to abatement, for when he agreed to pay a fixed rent for a term of years, he did so notwithstanding possible drought or other casualties, *e.g.*, in a village exposed to inundation, the tenants may take the land (1) either under an express stipulation to be absolved from

liability in the event of damage by inundation, or (2) they may take a rent fixed (on an average produce) independent of such damage or loss. In the latter case, the tenant may, on diluvion occurring, be allowed to revoke his engagement, but he cannot "claim abatement."

BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff* of Burdwan

Opinions are almost unanmious against retaining this chapter. To allow tenants of three years' standing to acquire rights over their holdings is an infringement of the zemindars' rights. Indeed, rights given to these tenants [by the new Bill] are more valuable than those of occupancy ryots, and zemindars will try their utmost to prevent their being acquired, while it will be very easy for ryots to procure proof of three years' holding. Chapter IV ought to be entirely omitted.

BABOO AUGHORE NATH GHOSE, *Subordinate Judge*, Dinagepore.

He would leave this Chapter (IV) as it is. The introduction of the same rate amongst three years' ryots with that payable by occupancy ryots, however desirable, would be too sudden an innovation to give satisfaction to landlords.

The addition of a clause to section 25, enabling the occupancy ryot to claim abatement when the rate of rent is above the prevailing rate fixed by the Collector, is in time likely to have the effect of equalising the rates.

BABOO MATADIN, *Subordinate Judge* of Gya, and *two Munsiffs*.
BABOO S S SAHAI and [illegible] MOHENDRO LALL GHOSE

Chapter IV is likely to make the gap created by Act X between the landlord and tenant wider and to prove disastrous to the ryot in the end. Some zemindars already consider it their interest not to allow a ryot to hold after 11 years, and, if the new Bill is passed, will change their ryots' holdings every third year. Cites the Chief Justice as to the practice alleged.

Section 29.—Native ideas of works of utility are very different from western ideas. People make tanks and wells more as pious acts than as works of utility: and if ryots had unrestrained power to excavate tanks and wells, they might often exercise it where it is not necessary, simply to perpetuate their memory. Similarly, as regards fruit trees, which when once planted, Hindus consider it impious to cut down. The land would thus be made permanently unfit for cultivation. A ryot would gladly take a piece of land unoccupied by trees, but seldom one with trees, so that they do not seem to him an improvement.

A dwelling house, too, is an improvement only according to western notions. Whatever land would be occupied by a house, will be usefully covered by him with crops, a temporary hut or stall being sufficient for his agricultural purposes. If he wants it for building, he can get it from his zemindar by paying a few rupees as *salami*.

Therefore all works of improvement should be constructed with the permission of the zemindar; and if he refuse permission, application should be made to the Collector, who should decide as to the necessity of the "improvement." The ryot might be compensated for improvements so made, in the event of ejectment; but from the amount should be deducted the rent payable by him.

Section 29.—Compensation should be allowed only when the improvement is made with the consent of the landlord.

BABOO A. C. MITRA, *1st Munsiff*, Patna.

Section 26.—Is the right heritable?

BABOO KEDAR NATH ROY, *Additional Munsiff*, Patna.

This section gives wider powers of enhancement to the zemindar than Act X gave. The Commission profess to base all the provisions protecting the ryots on the common law of the country and not to go by competition; but in enacting sections 26 and 27, they depart from this rule.

Sections 28 and 29.—In entitling a ryot of three years' standing to compensation for improvements, the Bill places him in a more favourable position than an occupancy ryot, who is only entitled to compensation in the case contemplated in section 20, clause (*e*).

Section 29: Explanation.—What the zemindars would consider an encroachment on their rights are described as improvements: (*a*) and (*b*) are opposed to several rulings [specified]; (*c*) and (*d*) are certainly improvements. As to (*f*), the planting of fruit trees, it has been held in the North-Western Provinces that the planting of trees without the zemindar's consent forfeits the right of occupancy. Compensation should only be given where the improvements are made with the zemindar's consent; but at the ryot's cost.

Section 31.—The ryot may cause the land to deteriorate in value by digging pits or other excavations.

Comparing here the status of occupancy ryot and three years' ryot, both are protected from arbitrary ejectment. The latter is subject to arbitrary enhancement, but he is entitled to compensations; the former is liable to a limited degree of enhancement. Except thus, the right and status of both are the same.

Reading Chapters III and IV with Chapter XII, he remarks that section 81 gives a Behar ryot the occupancy rights of Chapter III in three years, thus giving him the advantages of both Chapters III and IV.

The Behar landholder has to fight against a good many pleas in an ejectment suit. He may have to show (1) that the ryot had not acquired occupancy rights; (2) that he has not a three years' right; (3) that he has not made improvements; (4) that a notice to quit had been served. In Bengal, as soon as a ryot could raise the plea of occupancy, all questions of Chapter IV would become irrelevant.

The effect of section 81 may be illustrated as follows: A held 2 bighas of land for 12 years in plot No. 2 of Mouza Dindigul; in the next three years he held 99 bighas of land in plot No. 3 of the same Mouza. A will have a right of occupancy in 99 bighas: and if we look to the definition of the word "estate," the section will appear "more hideous." B and C are two proprietors of an estate in specific shares and possession, and are at enmity with each other. A holds 3 bighas for 12 years in the estate, and pays rent to B; he holds 99 bighas for the next three years and pays rent to C; he gets an occupancy right in 99 bighas. The effect will be to vest occupancy rights in a holding of three years.

BABOO RAM PERSHAD, *Subordinate Judge* of Shahabad.

Section 26 confers on ryots of three years' standing a valuable privilege. The provision is novel and calculated to cause discontent among landowners. There appears to be no equitable ground for such a concession which will make zemindars more jealous of the rights of their tenants.

The provision regarding compensation for disturbance and improvements will make the right more valuable than occupancy rights [of 12 years' standing] and proportionately diminish the value of the latter.

It does not appear on what principle the provision in section 28 is based. It is difficult to see how, when the ryot has given up the land which he held for three years on the ground that the amount of increased rent demanded from him is too high and unreasonable, the zemindar should be compelled to pay that unreasonable amount to the ryot as compensation.

Suppose (with reference to section 26) a lease contains a distinct provision that eviction shall be the penalty if the ryot erects any dwelling-house on the land, and he notwithstanding erects such dwelling house, and the landlord sues for eviction on the ground of breach of contract, will the ryot be entitled in the supposed instance to compensation, seeing that the erection of a dwelling-house is an improvement as the explanation to section 29 shows.

BABOO NEPAL CHUNDER BASU, *Munsiff* of Buxar, Zillah Shahabad.

Thinks that giving a right of occupancy to three years' ryots will be very hard to the zemindars. The rule for awarding compensation [for disturbance] will be an obstruction to improvement as it will prevent the zemindar from giving the land to the ryot offering the greatest amount of rent, who would probably improve the land to enable himself to meet the enhanced rent. Of course when a ryot improves land at his own cost of labour, he is entitled to compensation for such improvement, but he can be entitled to no compensation for disturbance of his possession when he has no right to retain possession.

The right of occupancy to be given to the sub-tenants of istumraridars and mokuraridars should be binding on them alone and not on the zemindars. The latter not having entered into any contract with the sub-tenants, nor having anything to do with them, it will be hard to subject the zemindars to any stipulation made between the mokuraridars and their sub-tenants. If the Mokuraridars or istumraridars default, their sub-tenants, if not protected against the zemindar, will, for their own benefit, try to save the superior tenure, and thus enable the zemindar to meet the Government revenue. If such rights of sub-tenants be binding upon the zemindars, the right of the latter will deteriorate.

Contract should not be a bar to the acquisition of a right of occupancy.

BABOO DWARKA NATH BHUTTACHARJEE, *1st Munsiff* of Arrah, Zillah Shahabad.

The provisions regarding compensation for *improvement* are no doubt salutary and excellent, but those relating to compensation for *disturbance* appear objectionable. It cannot be predicated of the disturbance in question that it is wrongful, for the tenant himself is instrumental in bringing it about by his reluctance to pay the enhanced rent demanded.

MOULVIE ABDOOL BARRI, *Munsiff* of Bhaugulpore.

No ticcadar should serve a notice of ejectment on a ryot of more than three and less than twelve years' standing, unless a period of not less than ten years of his ticca remains unexpired.

One year's rent as compensation for disturbance would in some cases be quite inadequate. As for example, if a ryot of eleven years' standing refuses to give false evidence in favour of his landlord, who therefore wishes to eject him and serves him with a notice to pay a rate which he knows the ryot cannot consent to pay, a discretion should be left to the Court to give not less than one year's rent demanded, and not more than, say, three or five years' rent.

BABOOS KOYLAS CHUNDER MOZOOMDAR and RUSSICK CHUNDER ROY, *1st and 2nd Munsiffs* of Mulfutgunge, Zillah Furreedpore.

Compensation for ejectment to ryots without a right of occupancy, is a novel idea borrowed from the Irish Bill. But the condition of the Irish peasantry is different from that of this country, and even in Ireland there is no law at present under which a tenant can claim compensation for ejectment. Under the Bill these tenants can be ejected for any of three grounds [section 26 (*a*), (*b*), (*c*)] that is to say, not at the option of the landlord, but for his own conduct; and yet the Bill provides for compensation for disturbance, *i.e.*, punishes Peter for the fault of Paul.

BABOO GIRINDRA MOHUN CHUCKERBUTTY, *2nd Munsiff* of Bhanga, Zillah Furreedpore.

Does not approve of Chapter IV. It and Chapter V are neither called for nor expedient, and will work the greatest injustice to zemindars or middlemen. These ryots are all tenants-at-will and have no right to the land. And while the gain to them will be very little, the loss to the landlords will be so great that they will try every means in their power to eject the tenants after a year or so, or will lease their lands for a certain term, in which case no right is recognised. If any privilege is needed for any one class of ryots below twelve years' occupation, it should be given to *khoodkhast* ryots, *i.e.*, resident ryots, cultivating lands of their own village for not less than six years.

Section 29.—Compensation should be restricted to cases in which tenants are evicted for non-payment of the excess demand, and not allowed in the other two cases contemplated.

MY. MAHABUT ALI and BABOO SURUP K. GHOSAL, *1st and 2nd Munsiffs* of Bhanga, Zillah Furreedpore.

Chapter IV should be omitted altogether. It is creating a new right which is unnecessary, since a great majority of the ryots of Bengal have already acquired rights of occupancy, and the rest will do so in the course of a very few years. In the two large estates of Majnamutha and Jellamutha almost all the ryots have occupancy rights. There are three classes—*Khoodkast* or resident ryots; *Pykast* or non-resident ryots who have been in possession more than 12 years (both classes having occupancy rights); and non-resident ryots who have not been in possession 12 years. Out of the total number (58,818) only 1,640 (or 2 per cent.) are non-occupancy ryots.

BABOO SASI BHUSAN CHAUDHARI, *2nd Munsiff* of Contai, Zillah Midnapore.

It would moreover be an encroachment on the rights of the landlord, and place the quasi-occupancy ryot in a better position than the occupancy ryot himself; for, *first*, while a notice of enhancement setting forth grounds is not necessary in the case of the latter, it is made necessary in the case of the former; *secondly*, the former is entitled to compensation for disturbance, and not the latter. Notice with grounds (always uncertain) makes enhancement impossible, and liability to pay compensation practically prohibits eviction.

An unjust interference with the vested rights of the land-owners, among whom it would lead to serious discontent and disaffection. In the Mofussil, peasant proprietors do not exist, except a few unregistered companies, such as Watson & Co., who are rather speculators than cultivators. The effect will be to introduce a class of persons who will enter on land temporarily only to raise a certain description of crop to the detriment of food-grains.

BABOO MUNNOO LALL CHATTERJEE, *Subordinate Judge*, Moorshedabad.

Section 27, clause (b).—Eviction from homestead (*bastoo*) and threshing-floor ought not to be allowed till after the expiration of six months from the service of notice to quit.

The effect of compensation to a ryot unwilling to pay increased rent would be mischievous. Practically there will be no

eviction, as the landlord will need to pay more than the rent received by him. Since this Bill has been published, zemindars have taken the precaution not to allow the ryot to occupy land for more than three years.

Section 29. Explanation.—The "supply or distribution of water for agricultural purposes" is not *improvement*, as irrigation accelerates exhaustion of the soil.

If the ryot chooses to improve land in which he knows he can have no permanent interest, the landlord should not bear the cost. The definition should be limited to what is absolutely necessary for the *bonâ fide* occupation, cultivation and enjoyment of the land; and compensation should be given only in exceptional cases of real hardship.

Section 30.—The proportion of capital representing the proper compensation should be determined by the Legislature, and not left to the Judge. The ryot should not be paid for improvement effected by personal labour.

The erection of dwelling-houses ought not to be allowed, except with the written consent of the landlord.

Where compensation is paid for improvement, it is inequitable to grant increased rent. Where there is no improvement, compensation in the shape of one year's increased rent ought not to be allowed.

BABOO ANANTO RAM GHOSH, *1st Munsiff* of Berhampore, Zillah Moorshedabad.

Chapter IV not approved. The doctrine of compensation is novel and impracticable. The improvements described are such as will necessitate the landlord's paying in any case not less than Rs. 50 for the boon of ejecting a single ryot; and ejectment will be practically abolished.

Proposes as a compromise abandoning the new tenant rights and the doctrine of compensation, and limiting the term for the acquisition of occupancy rights to six years.

BABOO KORUNAMOY BANERJEA, *1st Munsiff* of Sudharam, Zillah Noakhally.

Objects to this innovation. 1*st*, it will increase litigation and render necessary an additional judicial agency. *2ndly*, it will render dissatisfied an important section of Her Majesty's loyal subjects who are already complaining of encroachments upon the rights vested in them by the permanent settlement. *3rdly*, it is very doubtful whether this sort of legislation

was ever contemplated by the authors of the permanent settlement. Notwithstanding Article 7, section 8, Reg. I of 1793, it appears clearly from clause 2, section 60, Reg. VIII of 1793; clause 3, section 11, Reg. VIII of 1819, and other Regulations that the intention was to give certain privileges to *Khudkast* ryots, and to none else. *Khudkast* literally means one who cultivates his own soil, and the laws cited show that *resident* and *hereditary* cultivators were contemplated. The 12 years' occupancy right was (as declared by the High Court in 1864) an invasion of the rights of land-owners, *a fortiori* must the 3 years' right be. *4thly*, the more experienced members of the Commission, *viz.*, Messrs. Field and Dampier, are against Chapter IV.

Chapter IV will exercise a pernicious influence upon the acquisition of the right of occupancy by *twelve* years' holding. The zemindar will at the end of 3 years serve a notice for increased rent at an exorbitant rate, and effect the ejectment of his ryot. Sections 28 and 29 will be met by the zemindar securing beforehand a fresh tenant, who will not only pay a higher rent, but also give *salami*, *nuzzurana*, &c., which will more than cover the compensation to the outgoing tenant.

BABOO JEEBUN KISTO CHATTERJEE *Subordinate Judge* of Pubna.

Chapter IV should be omitted. It creates rights and liabilities by no means of a simple nature, and appears to be too large a detraction from the proprietary rights of the zemindar.

BABOO SHAMBHU CHUNDER NAG, *Munsiff* of Pubna.

Too great an encroachment on the zemindar's rights. The theory of compensation is altogether new, and is not adapted to this country. The Collector's table of rates should be applied only to occupancy ryots, not to non-occupancy ryots whose rents are always higher.

BABOO MOTI BALL HOLDAR, *Munsiff* of Shazadpore, Zillah Pubna.

A great encroachment on propietary rights, and likely to prove a source of continual litigation.

BABOO UMA CHURN KASTOGRY, *1st Subordinate Judge*, Tipperah.

The only benefit this will confer, which it is desirable to retain, is that certain petty tenure-holders whose tenures will be converted by the operation of section 11 into ryotee holdings, will be made occupancy ryots.

BABOO AUSHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore

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CHAPTER VI.

SECTIONS 36—42.

OF THE USE OF LAND FOR BUILDING PURPOSES.

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

A tenant ought not to use the land for purposes inconsistent with that for which it was let to him. Considers the provision estopping the landlord from objecting if he did not give tenant reasonable notice (two years) to be "indeed hard."

Where a trespasser erects a building with the knowledge of the landlord, the rightful owner is bound to pay the trespasser the cost of erection, but he is still entitled to take possession of the land by removal of the building. A ryot who has no right of occupancy is a tenant-at-will and becomes a wrong-doer when he violates a stipulation. The tenancy in such a case terminates, and the landlord, if not otherwise barred, may sue for possession; but if he knowingly allowed the tenant to erect the building, he may be liable for the cost of the erection.

As to cases in which the landlord has no knowledge of the building having been commenced, take an instance. A, of Calcutta, possesses a piece of rent-free paddy land in Beerbhoom. He lets it out to B, of Beerbhoom, for cultivation. The tenant pays rent every year by a cheque or order to the Bank of Bengal. In the meantime B erects a brick building and digs a tank on the land. Would A be estopped after two years? seeing he had no occasion to go to Beerbhoom.

Take another case in which the building is erected with the connivance of A's *gomashtah.* Is A bound? Equitably not. There is no law to punish the gomashtah.

The law of 1859 (Act X) is defective as to bastu lands. Where a tenant takes a piece of land for bastu or permanent dwelling-house, the law ought to guard him against eviction. When the lease is "without any limited term, the intention of the contracting parties must be gathered from the nature of the transaction, that the lease shall never terminate,

though the tenant may be liable to pay an equitable rent, if the rent fixed was inadequate."

Where the landlord knowing that the tenant, who comes from a different village, intends residence by erecting houses, permits the lessee to settle, he ought not, after the building is completed, to turn out the tenant.

The provisions of the section (41) should be more extended.

BABOO PROMOTHO NATH BANERJEA, *2nd Munsiff* of Burdwan.

The demand for *bastu* and *ud-bastu* land has very much increased, and the proposed provisions for the protection of a ryot who builds for the use and occupancy of *himself* and *family* are both important and necessary, a right of occupancy to such land not being given by the present law of 1869. Suggests that where a building is erected with the consent of the landlord, it may be made transferable, even before the right of occupancy is acquired, to meet the case of "a favoured son of Plutus with a smile of fortune," who having built a "a splendid mansion" may need to sell it before the expiration of 12 years.

BABOO MATADIN, *Subordinate Judge* and BABOOS S S. SAHAI, and M L. GHOSE, *Munsiffs* of Gya.

Unnecessary and likely to upset the whole unwritten law of the country as established by custom. A ryot never requires to build a pucca house on his jote land. The members of a village community (zemindars and ryots) build their houses close to each other on a selected spot of land, that they may be protected from thieves. If a ryot can afford to build a brick house, he can easily obtain a piece of land from the zemindar for a *salami* or premium, and procure a perpetual lease; and it is the interest of the zemindar thus to accommodate ryots.

As a general rule, a zemindar never takes rent for his ryot's homestead lands. Instead of rent he gets from them fuel, milk, curd or *ghee*, which it is very easy for them to give, or what is termed *begar*, forced labour. In return he gives sweetmeats and clothes to the ryots on the marriage of his children or shrad of his ancestors; and if he did not, they would decline to work for him.

In towns and large villages, rent is taken for the ryot's homestead lands, but it is seldom enhanced. It is levied on a different principle; not on the quantity of land occupied, but according to the circumstances and condition in life of the ryot

who gets as much as is necessary for his dwelling-house, cow-shed, &c., and is assessed in proportion to the Bari land (land used for raising vegetables) held by him.

Section 40.—Two years is too short a period and should be raised to three years, and provision ought to be made for absent zemindars who are away on long pilgrimages or confined in jail.

Section 41.—Will work great hardship on the tenants. If land is given to a tenant to build his house on, he should not be ejected from it, even after a day's occupation. It is only when he converts culturable land into homestead, he may be ejected. Land given for building purposes is supposed to be given for ever. It can be inherited and sold. Devising is unknown in the Mofussil. If some rulings have not recognised this right, the matter should be made clear by legislation; but the right ought not to be abrogated.

Section 42.—The percentage allowed is too low. The last clause were better omitted. The provisions in this chapter are likely to affect chiefly lands in town.

BABOO KEDARNATH ROY, *Additional Munsiff*, Patna.

Section 41.—The word used in this section is "tenant" and not "ryot," so that a tenure-holder may also acquire a right of occupancy under this section. When we look to the definition of the word "tenant," it appears that even a ticcadar or zurpeshgi-holder may have this right. In this country ticcadars by one or several leases are sometimes in possession for 30 or 40 years. During this time they may build houses and occupy for 12 years; at the end of this term, the landlord will have no right under this section to turn him out. This is another right of occupancy under the Bill.

Section 42.—Defines another scale of enhancement than sections 22 and 23. Two standards are applied, *viz.*, the Pergunnah *nirik* or 5 per cent. of the market value, both variable and not fixed: the former may be improved and the latter may rise. In Behar, where parties go to contract for the sites of their houses, 7 per cent. of the market value would be the ordinary standard; but ordinary ryots pay only *mutarfas* for their holdings, the relics of the village community still survive, the milkman pays certain seers of milk, the oilman oil, the barber shaves without charge; and so on, and they hold their homestead in lieu of these services.

In the scale laid down here, we do not find any trace of the phrase "ryots of the same class;" the inference is that a cultivator will have to pay the same rate for his homestead as a rich tenure-holder: this is not just and equitable.

BABOO GIRINDRA MOHUN CHUCKERBUTTY *2nd Munsiff* of Bhangah, Zillah Furreedpore.

These sections supply a defect and remedy a wrong noticed by all who had to decide questions relating to *bastu* lands in suits for ejectment.

BABOO KYLAS C MOZOOMDAR and BABOO RUSSICK C ROY, *1st and 2nd Munsiffs* of Mulfutgunge, Zillah Furreedpore

In the interests of the large and increasing non-agricultural and trading classes, it is time for such a law; yet the rent fixed at 5 per cent. is too low. Do not object to giving tenants power to cut down trees and dig ponds without consent of landlord; but think that the Bill should also deal with the other side of the question. Some provision should be made to prevent tenants cutting down trees with a view to relinquish the land.

BABOO JUDOONATH ROY, *Subordinate Judge*
BABOO KEDAR N. MOZOOMDAR, *2nd Subordinate Judge.*
BABOO KEDAR N. CHATTERJEE, *1st Munsiff*
BABOO JOGENDRO N DEB, *2nd Munsiff*, Midnapore.

No ryot should be allowed to erect brick houses without the permission of his landlord until he has acquired a right of occupancy by holding for 12 years.

BABOO SASI BHUSAN CHAUDARI, *2nd Munsiff* of Contai.

These provisions will be welcomed throughout Bengal with the utmost pleasure; but he would suggest that they be not prospective, but retrospective, and would omit the words "after the commencement of this Act." Would also add in section 42, after "equal to," the words "an amount not exceeding;" and after "such land," the words "as will be determined by the Court."

BABOO MUNNOO LAL CHATTERJEE, *1st Subordinate Judge*, Moorshedabad.

Ought strictly to be regulated by contract, and the chapter ought to be omitted. The permission given to ryots in section 36 will be a hardship on the zemindar. The ryot's family is in many cases a joint Hindoo family; is it meant that he may erect apartments for such of his relations as do not share in the cultivation?

Sections 37 and 38.—Will compel zemindar to resort to litigation and hold surveys.

Section 39.—The "reasonable time" ought to be defined, and section 5, Act XV of 1877, extended here. The expression "any loss" is vague. Diminution in the value of building materials on account of breakage, and cost of their removal, ought to be the reasonable equivalent.

Section 40.—Will compel landlords to make biennial surveys.

The privilege may be allowed to ryots holding at fixed rents; but not to those holding for three or more and less than 12 years, nor even to occupancy ryots. It will be an unjustifiable invasion of zemindars' rights. Ryots may be allowed to build thatched houses without permission.

BABOO ANANTO RAM GHOSE, *1st Munsiff*, Berhampore.

Section 41.—Will be an unwarrantable encroachment on rights of property.

Section 42.—The 5 per cent. should be 10 per cent.

Some such provisions should be made. But it would be better to leave the question of rent in the hands of the Collector, who should prepare a table of rates. Considering the respect Bengalis have for hearth and home, the rent of such land should not be disturbed for 10 years.

BABOO SHAMBHU CHUNDER NAG, *Munsiff* of Pubna.

Delay is not acquiescence; hence sections 39 and 40 should be omitted. The other sections should have retrospective effect.

BABOO JUGGOBUNDHOO GANGULY, *1st Munsiff*, Bogra.

Section 40.—The provision as to delay in serving notice, is unjust and opposed to public policy. The delay may be owing to a thousand reasonable causes or to circumstances beyond the zemindar's control. There is no reason why the hands of a wrong-doer should be strengthened and artificial difficulties thrown in the way of redress.

BABOO LOKINATH NUNDY, *2nd Munsiff*, Bogra.

Sections 36 and 41.—Will do much good, and supply a long-felt want.

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CHAPTER VII.

SECTIONS 43—45.

MERGER.

A new enactment. Does not see its usefulness. — BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

The doctrine of merger will meet with universal approbation, because it "depends upon the mathematical truth that 'greater always includes the less'." — BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff* of Burdwan.

The 3 months' time allowed by section 43, clause (*b*), ought to be extended.

The law of merger does not provide for cases in which the occupancy ryot gets subsequently a superior interest. The whole chapter is one-sided, and takes the case of superior holders gaining subordinate interests, but not *vice versâ*. — BABOO KEDAR NATH ROY, *Additional Munsiff* of Patna.

[The Baboo raises also intricate questions with reference to the application of the law to cases of partition.]

Section 45.—Does not reflect much credit upon the framers of the Bill, for although conditions 3 and 4, clause (*a*), section 43, are made applicable to this section, all subordinate interests are become subject to the revenue laws of the country, and the tenants of an escheat estate are placed beyond the pale of the Rent law. If rack-renting exists anywhere in the Behar Province, it looks rather selfish for a Government to take all precautionary measures for escheat estates and fetter the ordinary proprietors with numerous technicalities and rules.

Though the doctrine of merger does not at present apply to purchases in this country, the provisions are necessary to settle difficulties which sometimes arise. — BABOO GIRINDRA MOHUN CHUCKERBUTTY, *2nd Munsiff*, Bhangah, Zillah Furreedpore.

Will have a beneficial effect. — BABOO SASI BHUSAN CHAUDHURI, *2nd Munsiff* of Contai.

No objection. — BABOO MUNNOO LALL CHATTERJEE, *Subordinate Judge* Moorshedabad.

BABOO ANANTRAM GHOSE, *1st Munsiff*, Berhampore.

Approved.

BABOO SHAMBHU CHUNDER NAG, *Munsiff* of Pubna.

Just and fair with reference to the doubts which at present exist in respect to the doctrine of merger, and the difficulties that are met in practice when an inferior tenure, by operation of law or otherwise, vests in the holder of the immediately superior tenure.

BABOO MOTI LALL HOLDAR, *Munsiff* of Shazadpore, Zillah Pubna.

This doctrine should not be applied in this country. Does not see much benefit to accrue from it. Its introduction at once would work great hardship upon zemindars and tenure-holders who have many jummas of their own in their zemindaries and tenures respectively.

BABOO AUSHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore.

Will curtail litigation; but where a person possesses a 2-anna share of a *Se-patni*, a 3-anna share of a *Dur-patni*, and a one-anna share of a Maliki right, it is doubtful whether he will be content to see his several rights merged into one. When an occupancy tenant purchases a superior tenure, under this chapter his occupancy right will merge in the superior tenure, although, if liable to enhancement, he would prefer having his rent enhanced as an occupancy tenant under section 23, which provides so many safeguards.

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CHAPTER VIII.

SECTIONS 46–54.

OF THE REGISTRATION OF TRANSFERS OF TENURES, UNDER-TENURES, AND OCCUPANCY HOLDINGS.

Section 46.—The period of limitation should be extended, and the cause of action ought to be calculated from the date possession is taken by the transferree. The registration law prescribes four months, and "the auction sale also takes time for confirmation of sale and for registration of the certificate of sale."

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

Suggests that after a form of register of transfers has been prescribed by the Board of Revenue, the person concerned in any such transfer shall be entitled to a copy of the entry free of any charge.

BABOO PROMOTHO N. BANERJEE, *2nd Munsiff* of Burdwan.

In the event of the landlord refusing to register, he should not only be liable to a civil action and damages, but also to some other penalty, *e.g.*, payment of ten times the fees required on such transfers. A penalty should also be attached to "excessive exaction of registration fees."

The three months allowed for registration is too short a period, especially in cases of succession by inheritance. Among Hindus, a month passes in mourning for the death of a member of the family, and it often happens that the minds of the survivors are not settled before the expiration of three months sufficiently to turn to business. Munsiff would propose to extend the period to six months. The penalty of forfeiture is too severe for failure to register a tenure. A fee of 20 per cent. and appropriation of profit by the landlord would be sufficient. Forfeiture might be a special hardship in the case of a helpless widow, whose failure to register was due to ignorance or imbecility. Though ignorance of the law cannot excuse, it may be visited less severely, say by temporary possession on the part of the landlord.

It will be easy for the landlord's gomashtah to reject an application for regis-

BABOO AGHORE N. GHOSE, *Subordinate Judge* of Dinagepore

tration and to take possession without the intervention of any Court or public officer, and thus to compel the tenant to sue in the Civil Court. The remedy would be to provide for the successor or transferree to apply to the Collector for registration, lodging the requisite fees in the Collectorate. If the landlord objects after the Collector's notice, the Collector should refer the parties to the Civil Court, as he does under section 41 of the Sale Law (XI of 1859).

The registration fee should be raised to 5 or 10 per cent., but should not be charged to tenants in cases of succession.

BABOO MATADIN, *Subordinate Judge* and BABOOS S. S SAHAI and MOHINDRO LALL GHOSE, *Munsiffs* of Gya BABOO A.C MITRA, *1st Munsiff* of Patna BABOO KEDAR NATH ROY, *Additional Munsiff* of Patna

Purchasers ought to be made to give security, and if they do not register the transfer within the time prescribed, the zemindar should be at liberty to refuse to recognise it.

Fee on succession ought to be abolished.

Section 47.—The fee will be looked upon as very inadequate.

Section 49.—The penalty attached to non-registration falls on the transferrer. How should this compel the transferree to register?

Section 50.—The penalty attached to non-registration of tenures transferred by succession or execution sale (section 50) is attachment and possession; comparing section 50 with section 51, it appears the zemindar has no right under section 50 to let out to a stranger against a defaulting tenure-holder, and much of the force of this penalty waxes loose (is impaired?) when the zemindar has been made subject to account to his tenant.

Conceive the difficulty into which the zemindar will fall, if the transferree persist in not registering his name: he will have to attach the tenure and hold it as many years as the refractory tenant chooses, and if he should let it to a stranger, the transferree may claim it at any distance of time.

The penalties of sections 50 and 51 would be dangerous to the ryots in the hands of tyrannically-disposed zemindars. Many ryots hold in the names of their ancestors. Where is the equity of forcing registration in case of succession?

BABOO GIRINDRA MOHAN CHUCKERBUTTY, *2nd Munsiff* of Bhanga

Supply an omission, and are essentially necessary for the interest of both landlord and tenant.

There ought to be a provision conceding to zemindars the right to sue and get decrees for arrears of rent against such of the surviving members of the family of a ryot as are known to him. For the laches of the descendants of dead persons in regard to registering their names, a zemindar ought not to suffer.

BABOO MUNNOO LALL CHATTERJEE, *Subordinate Judge* of Moorshedabad.

Section 48, clause (*c*).—The Legislature should define the time, which ought to be a fortnight after confirmation of sale.

Section 54.—If the provisions of the law as to registration of transfers are substantially followed, there is no necessity for the interference of the Board to prescribe forms in which such transfers are to be registered. State interference with private accounts should be avoided as much as possible.

The copy of register should be *primâ facie* evidence as between the landlord and the grantee of such copy.

Approves of sections 46 to 49, but is of opinion that the *minimum* fee should be Rs. 2, for landlords now receive more than Re 1 when they admit to registration.

BABOO ANANTO RAM GHOSH, *1st Munsiff*, Berhampore, Zillah Moorshedabad.

Sections 50 and 51.—Attachment for non-registration too harsh a penalty; a fine would be better.

Will be gladly accepted by all parties.

BABOO SAMBHU CHURN NAUG, *Munsiff* of Pubna.

Provisions wholesome; but attachment, fine, and forfeiture are penalties which would work very hard upon poor, illiterate ryots. It would be sufficient if tenants were not recognised till their names were registered.

BABOO MOTI LALIA HALDAR, *Munsiff* of Shazadpore, Zillah Pubna.

Provisions salutary. There should be a proportionate fee for the registration of a portion of the holding with the landlord's consent.

BABOO AUSHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore.

Where different heirs apply at different times, is a landlord to charge 2 per cent to each?

Section 48 (*c*).—If more than two months elapse, how is a landlord to realise his arrears?

There is no provision against collusion between the landlord's amlah and the parties registering.

The modes of registration should be more easy.

Will a sale certificate, such as is referred to in section 209, be admissible without being registered?

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NEW RENT BILL.

CHAPTER IX.

SECTIONS 55–64.

OF RENT, INSTALMENTS OF RENT, RECEIPTS FOR RENT, DEPOSITS OF RENTS, APPORTIONMENT OF RENT, AND HYPOTHECATION FOR RENT.

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

Section 55.—As regards the provision for interest on arrears of rent, it "runs to interfere with the terms of agreement entered into between landlord and tenant." The putnidar and other under-tenure-holders who pay interest on their arrears of instalments (which may be monthly instalments) according to their kubooleuts, ought to get the same interest from their tenants if there be any agreement to that effect. The four instalments proposed in the Bill should not interfere with the terms of the agreement to pay interest.

Section 56.—The words "unless the tenant can show," &c., should be omitted, as the provision for interest is not a penal clause, but the recognition of a debt. Intermediate holders are not exonerated from liability under any circumstances, and "they ought not to suffer when their claim is withheld by their tenants."

Sections 62 and 63.—If the division of jummas be deemed at all desirable or necessary, it ought to apply also to the superior tenures. Baboo Bhooputty is against the apportionment of rent without the consent of the landlord. It will be against the terms of his agreement to force him to do so.

Section 64.—Hypothecation for rent is not a *new* provision, but the provision rendering a ryotty holding with a right of occupancy liable to sale instead of ejectment, is new and objectionable. It mixes up such holdings with permanent tenures of a transferable character in a way likely to cause great confusion. Putni tenures and the like are valuable properties, created on payment of valuable consideration, and are sufficient security for the discharge

of rent; but the ryotty holding has "no analogy to this kind of valuable property."

The hypothecation of the tenure alone for its rent "seems fully insufficient." The crops of the land are hypothecated, and this was the law before and after Act X of 1859. No circumstances have arisen to necessitate a modification of the law: the crops of the ryotty holding ought to be primarily liable; failing that, the tenure and other properties of the defaulter.

The law of distraint is omitted in the Bill. The rules made by Act X of 1859 have given no cause of complaint. Why should they be repealed, and the means of recovering rent be rendered less effectual?

BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff* of Burdwan.

The provision as to four instalments will reduce litigation.

Deposit of rent.—The Commissioners are right in doing away with the necessity of proving previous tender of rent, as this has led to much perjury. The privilege allowed to ryots of paying rent into sub-divisional treasuries, is a valuable improvement, as well as the addition of two new cases in which rent may be deposited.

Notice of deposit should be served individually on landlords who have not got agents about the Collectorates, and should the landlord after such service still sue for the rent, he should be liable to a penalty.

Hypothecation—Hypothecation of tenures for rent (though a novel provision) is a sort of compensation for the abolition of distraint and a most effectual guarantee for rent. The original draft of section 64, giving preference to the landlord's claim, would have deterred decree-holders from bringing holdings to sale, lest they should prove mere instruments for realizing rent for the landlords, and this would lead to diminution of the value of the property. Cases may occur in which sales take place without the landlord's knowledge; they should always be subject to his lien. Without a provision to this effect, mahajans might, by means of collusive decrees, deprive the landlord of all the benefit which is secured to him by the proposed hypothecation.

BABOO AUGHORE NATH GHOSE, *Subordinate Judge* of Dinagepore.

Tenants should be allowed to deposit rent, as at present, in the Civil Courts, otherwise inconvenience will be felt in a district like Dinagepore, where there is no sub-divisional office in the mofussil.

The zemindar ought to be compelled to mention the ryot's annual jumma, and the area of his holding, in each receipt. If these particulars are inserted only in the statement of account mentioned in clause (*b*), the ryot may withhold it and produce some of the receipts only, and thus successfully dispute the jumma claimed by his landlord. It may be believed that the landlord gave him no statement of account, but it can never be believed that the ryot went on paying rent from time to time and took no receipt.

The ryot never disputes the correctness of his jumma unless he is dragged into Court, in which case he is advised to do so, and the zemindar is advised to deny the receipt of the sum actually paid by him; and there being no good evidence on either side, the Court is compelled in a majority of cases to allow the jumma admitted by the ryot and the payments admitted by the zemindar. Are therefore of opinion that a ryot's jumma and the area of his holding should be entered in each of his receipts; and the statement of account ought to be done away with, and the particulars it contains to be entered in the receipt.

Section 58.—Two sorts of cases are of common occurrence,—the deposit of rent by ryots, and the institution of rent suits by zemindars; and they are so closely connected that they ought to be disposed of in the same Court. This would give much facility to both the parties who could use the same agency in both instances. With reference to the supposed facility afforded to the ryots by the permission to deposit rent in the sub-divisional Court, they observe that in many places there are Munsiffs where there are no sub-divisional Courts; *e.g.*, Pursa in Zillah Sarun, and Kudba in Zillah Purneah. And for this and other purposes of the Bill, Government can invest Deputy Collectors with the powers of Munsiffs and *vice versâ*.

Section 58 (1), (c).—The ryot's right to deposit rent in Court should be restricted to cases in which any dispute exists as to the right to receive it, otherwise he may deposit it simply with the object of harassing the zemindar.

Section 61.—Zemindars ought not to be made to bear the cost of serving the notice; they cannot all be expected to have agents

at a sub-divisional or Munsiff's Court. The ryot ought to be made liable for damages for depositing rent without any good ground as provided in the old law.

Section 64.—The produce should be hypothecated for the rent, not the holding itself. Nor should the zemindar be permitted to proceed against immovable property of his ryot before he has exhausted the movables. If a ryot is deprived of his bullocks, he can carry on his cultivation by means of hired ones; but if he is deprived of his jote or dwelling-house, "he must perish."

BABOO A. C. MITRA, *1st Munsiff*, Patna.

It is most necessary, at least in Behar, that the receipt should specify the amount of jumma payable by the ryot.

BABOO KEDAR NATH ROY, *Additional Munsiff* of Patna.

Sections 58 to 61.—The result of these sections will be to convert the sub-divisional office into a regular zemindari sherishta, and half the income of the zemindars will go to feed the venal amlah.

Anybody who has the slightest experience in trying the pleas of tender, knows how futile and false they frequently are. Under the Bill, no collection will be possible in a joint estate. The additional Munsiff ventures to say that most of the Civil officers in Behar, or at any rate in Patna, know that the current belief of the ryots there is that simple deposit without tender is enough to extricate them from the liability of paying rent to their landlords. In May last, about 150 applications to deposit were made to the additional Munsiff by the tenants of "a refractory mouza." In none of these applications did he find the allegation of tender. He refused them. The fault may have been the Pleaders'; but he learnt on inquiry that they were the results of a decree obtained by the zemindar for a rate higher than they pleaded.

BABOO RAMPERSHAD, *Subordinate Judge*, Shahabad.

Clause (c) of Section 58 is calculated to provide for a case which was hitherto left unprovided for. Sometimes cases occur where two rival parties claim the rent for the same land and the ryot does not know what to do.

BABOO NEPAL CHUNDER BASU, *Munsiff* of Buxar, Zillah Shahabad.

The system of accounts to be kept by zemindars should be laid down by legislation. The ryots of this province [Behar?] have not been able to profit by the privileges given by Act X, because of the loose and irregular way in which zemindars keep accounts and grant receipts. In rent suits the only document.

produced are jamabundies and receipts; pottahs and kubulyuts are rare, not amounting even to 1 per cent. of the tenures in any village. The ryots, too, are of opinion that exchange of pottahs and kubulyuts will destroy their *guzashta* rights and rights of occupancy, and turn them into new ryots holding from the date of the pottah. The present jamabundies and receipts should, in Munsiff's opinion, be rejected generally, and as to oral evidence it is hard to procure. Ryots cannot get witnesses of their own village for fear of the zemindar, and when ryots combine, zemindars cannot get witnesses. Both parties, moreover, fall back on the *sashmahees* filed in the Collectory in the year 1252 to 1256 F. The case is the same with Road Cess and Income Tax papers. Accordingly the system of accounts should be regulated by legislation and the principal account papers filed in Collector's office. The suggestion of the Behar Rent Commission should be enacted into law.

BABOO KYLAS CHUNDER MOZOOMDAR and BABOO RUSSICK CHUNDER ROY, *1st and 2nd Munsiffs* of Moolfutgunge, Zillah Furreedpore.

Object to notices of deposit of rent being dispensed with. There is no ground for supposing that landlords have agents at head-quarters or at sub-divisions; more than 75 per cent. of them having no such agents there: and even when they have agents, these have too much to attend to, and cannot be expected to know anything about deposits.

BABOO GIRINDRA MOHAN CHUCKERBUTTY, *2nd Munsiff* Bhangah, Zillah Furreedpore.

Approves of four *kists* in the year, as the plan of monthly instalments enabled zemindars to harass their tenantry by monthly suits, and thus force them to yield to enhanced rates of rents. Even four *kists* will not be a perfect remedy, though the number could not be reduced without injustice to landlords. As the only relief therefore, the rules for deposit of rent should be made as easy and convenient as possible. Approves of the provisions made, and suggests its being made optional with the ryot to deposit his rent either in the Civil Courts or sub-divisional or Collectors' Courts. As landlords have their agents in those Courts in a few cases only, the notice should be affixed not only there, but also in the sub-registry office, thannahs or out-posts, and the gunge, haut or bazar, nearest to the land for which rent is due. To prove this, should suffice to prove service of notice. A landlord's objection as to tender of rent due should not be entertained if not brought to the

notice of the Court in which the rent is deposited within a month of such deposit. Issuing notices to landlords at their expense seems unfair. The apportionment of rent should be made on the principle of the Full Bench ruling in the case of Issur Chunder Dutta *vs.* Ram Krisna Doss.

Section 64.—Crops should be hypothecated as well as land.

BABOO JODOONATH ROY, BABOO KEDAR NATH MOZOOMDAR, *Subordinate Judges*, BABOO KEDAR N. CHATTERJEE, JOGENDRO NATH BABOO DEB, *1st and 2nd Munsiffs*, Midnapore

Section 57.—In every receipt for rent granted by the landlord, there should be an additional column showing the amount of annual rent payable by the tenant. The back of the counterfoil should bear the signature of the tenant, and the amount paid by him specified in figures as well as in letters.

BABOO SASI BHUSAN CHAUDHURI, *2nd Munsiff* of Contai, Zillah Midnapore.

Sections 55 to 57 will be productive of immense good. Clause (c) of section 57 will, however, press with undue severity upon small landholders, whose whole income consists of 20 Rupees or so collected from half a dozen or a dozen tenants. To them one anna spent in purchasing forms would mean the loss of one day's means of sustenance.

Section 61 (b).—The effect of this would be similar. It would be hard to make the landlord pay for service of notice, and on small landholders the effect would be ruinous; *e. g.*, where a ryot had a private grudge, he might deposit (say) rent equal to 4 Rupees in the Collectorate without any tender, and compel his landlord to spend 2 Rupees in getting it out. Cases like this are of frequent occurrence, and will be more frequent if these provisions become law.

Rejoices exceedingly to find the law of distraint abolished. It was an engine of oppression in the hands of unscrupulous zemindars.

BABOO MUNNOO LALL CHATTERJEE, *Subordinate Judge*, Moorshedabad.

Section 55.—Copy of Collector's order should be posted also in Courts of Subordinate Judge and Judge of Small Cause Court.

Section 57, Clause (b).—After "to receive" and before "from his landlord" insert "free of cost."

Section 59, Clause (b).—Add "A separate application should be made for each holding to prevent confusion."

Section 61, Clauses (a) and (b).—Great laxity prevails in the service of these notices. The Chowkidar or Mundul should be an attesting witness. The zemin-

dar should not be saddled with the cost.

Approved.

Will be gladly accepted by all parties.

BABOO ANUNTRAM GHOSE, *1st Munsiff*, Berhampore.

BABOO SHAMBHU CHUNDER NAG, *Munsiff* of Pubna.

The precautions against the abuse of the right of deposit insufficient. The notice should be served before deposit, and deposit should follow in case of zemindar not appearing or objecting.

BABOO JUGGOBUNDHOO GANGULY, *1st Munsiff*, Bogra.

Section 56.—Objects to instalments being reckoned arrears if not paid before sunset. Ryot will be harassed with suits every quarter.

BABOO LOKI NATH NUNDY, *2nd Munsiff*, Bogra.

Section 64.—Does not provide for hypothecation of land where ryot has not acquired a right of occupancy. Most of the poorer classes of ryots have no other property which landlord can look to, and he will in time not let his lands to such.

Rent could be conveniently deposited in Civil Courts and notice should be served free of cost. The indulgence allowed to ryots to deposit rent when failing to receive joint receipts ,or entertaining doubt of title, would be abused to the harassment of zemindars.

BABOO MOTI LALL HOLDAR, *Munsiff* of Shazadpore.

Apportionment of rent should be made in the cases mentioned, but on the principle of the Full Bench ruling in case of Ishwur C. Dutta and another *v.* Ram Kristo Dutt.

Objects to a single ryot being allowed to move the Court against co-parcener zemindars.

Depriving zemindars of the power of distraint takes away the only means they have for easy recovery of rent. Tenants, after reaping and selling the crops, go away to avoid payment of rent; and in some cases they have no moveable property except a few earthen-wares, having sold their bullocks. In such cases the zemindar will not be able to recover rent; and from Sub-Judge's experience in holding sales of occupancy rights, he is certain no one will offer a pice for the holding of a tenant-at-will or one whose tenancy ends with every year.

BABOO UMA C. KASTOGRY, *1st Subordinate Judge*, Tipperah.

Some provision should be made on behalf of the zemindar (as was done for the ryot by Financial Notification, dated 12th February 1874) to regulate the Court-fee on his application for rent in deposit. He has had to apply on an 8-annas stamp

BABOO AUSHOOTOSH AUDDY, *1st Sudder Munsiff* of Rungpore.

paper to take out a deposit of even an anna.

Provision should be made for dakhilas exceeding Rs. 20 being stamped before they can be admitted as evidence.

Sections 62 and 63 curtail the rights of co-parceners, and section 64, by abolishing distraint of crops, deprives landlords of a very useful means of realising arrears.

In early times a tenant had to pay one-sixth of the average gross produce and owned the land. His position changed in course of time till Regulation VIII of 1793, and subsequent laws up to Act X of 1859 virtually declared a superior class to be actual proprietors, and the rent reached and sometimes exceeded *half* the produce, so that at a rough calculation he got 40 per cent., the Government and zemindar getting (45 + 15 =) 60 per cent. A ryot is therefore ordinarily obliged to borrow money to purchase seed, ploughs, &c., and in time of scarcity he gets ruined. Provision should be made to secure him remission or suspension of rent in time of scarcity.

BABOO KARTICK CHUNDER PAL, *Munsiff* of Nelphamaree, Zillah Rungpore.

Monthly *kists* are prescribed under *kubooleuts* containing provision for interest (the ryot not being really a free agent in the contract) and every defaulter is harassed and much interest exacted. The *kists* should be settled by law and interest fixed at 12 per cent.

Taking away the power of distraint will be a great boon to ryots, as distraint has invariably been used as an engine of oppression.

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CHAPTER X.

SECTIONS 65—70.

CO-PARCENERS.

This chapter is unnecessary. By a Full Bench ruling, a co-parcener can sue for his rent if he had separate collection. The late Chief Justice held that the rent when due becomes a debt, and can be sued for by one of the co-sharers. If the interference of the Legislature is needed, it ought to go to the extent of preventing a multiplicity of suits and granting easy relief to the co-sharer, without prejudice to the tenant. The appointment of a manager against the will of the joint proprietors, at a cost which might prove heavy to the estate, would be no benefit, but ruin.

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

Sections 65 and 67 are well adapted to remedy the evils of co-parcenary more effectually than was done by Regulation V of 1812.

BABOO PROMOTHO N. BANERJEE, *2nd Munsiff* of Burdwan.

Section 69 is a mere reproduction of a rule laid down by a current of decisions of the High Court.

The provision that one co-parcener may not bring a tenure to summary sale is a mere modification of section 61, VIII (B.C.) of 1869, which Munsiff would further modify by providing that a sharer in a joint undivided estate may be allowed to sell under-tenants' rights and interest only so far as his own share is concerned.

This provision is necessary where the joint owners are in *joint possession*, not where they are in separate possession. This point should be made clear, else this law may become a powerful engine in the hand of an unfriendly co-parcener to harass and annoy another. The Judge should interfere on the application of the Collector or two-thirds of the co-parceners or ryots. This will serve as a guarantee of the reality of the inconvenience or injury.

BABOO MATADIN, *Subordinate Judge* AND BABOOS S. S. SAHAI AND M. L. GHOSE, *Munsiffs* of Gya.

BABOO A. C. MITRA, *1st Munsiff* of Patna.

Section 70.—Facility ought to be given to a co-sharer suing for rent, enhancement, or measurement even when all do not join; but provision may be made against a ryot being liable for separate costs.

M CHUCKERBUTTY, *2nd Munsiff* of Bhangah, Zillah Fureedpore.

The provision for the appointment of managers of joint undivided estate on the application of a ryot or any one interested in it, is a direct interference with the rights of property, and will prove a constant trouble and expense to the holder.

BABOO ANANTORAM GHOSE, *1st Munsiff* of Berhampore, Zillah Moorshedabad.

Approved.

BABOO KORUNAMOY BANERJEE, *1st Munsiff* of Soodharam, Zillah Noakhally.

Chapter X has settled an important and vexed question of procedure.

BABOO SHAMBHU C NAUG, *Munsiff* of Pubna

Will be gladly accepted by all parties.

BABOO JOGGOBUNDHOO GANGOOLY, *1st Munsiff* of Bogra

Must be omitted, and the general law of coparcenary not interfered with, for the cost of a manager will press hard on poor co-parceners. Persons not in possession, but claiming a share rightly or wrongly, will have recourse to this chapter and harass opponents.

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CHAPTER XI.

(SECTIONS 71–80.)

Of some miscellaneous rights of Landlords and Tenants.

Baboo Promotho Nauth Banerjee, *2nd Munsiff* of Burdwan.

Section 77.—In regard to improvements without the landlord's consent, they should not affect the lands of other neighbouring ryots, or those belonging to the landlord.

Clause (*b*) would be objectionable on the ground that a ryot might plant trees to the permanent disfigurement of, and injury to, the soil, and cut and sell them at his pleasure, leaving the land in such a condition with roots of trees, &c., as to greatly embarrass the next cultivator, and ultimately the landlord, who would find it difficult to find another ryot for it.

Section 79, clause (*3*).—A notice does not always clearly convey the idea of the relinquishment of all the plots comprised in the holding, and thus gives rise to harassing and useless litigation. Munsiff would therefore suggest that boundaries of all the plots of a holding should be distinctly specified in the notice of relinquishment.

Section 80.—Important section. It should also contain a provision for determining "the reasonable rent" by an order of the Court ejecting the ryot. A landlord trespassing in spite of the provision in this section should be liable to a penalty, and the ryot's right to hold on should extend to that plot only on which are growing crops, unless he chooses to pay reasonable rent for the whole.

Baboo Aughore Nath Ghose, *Subordinate Judge*, Dinagepore.

If a ryot relinquishes his holding, leaving stumps of trees cut down and appropriated by him, the landlord should be allowed to sue him for the expense of uprooting the stumps.

Section 71.—The words "khas" and "actual" should be omitted from this section. Direct possession is not necessary in order to enable a proprietor to grant leases.

Clause (*2*).—The words "unless evidenced by a registered contract" ought to

be added, because the less the law interferes with private arrangements the better.

The provisions of sections 37 to 40, Act VIII (B.C.), 1869, ought to be retained.

Section 77, clause (*b*).—Does not see any justification for interfering with the private right to cut down and appropriate trees planted by a tenant's predecessor, which right is recognised by custom to belong to the owner of the land, unless expressly delegated to the new comer. The ryot does not want this concession.

MOULVIE ABDUL BARRY KHAN, *Sudder Munsiff* of Bhaugulpore.

Section 71 (*3*) should be expunged. A tehsildar would not show his written authority to the ryots, nor would 90 per cent. of them understand its purport if shown. There being no record of such authority, the provision would give a powerful handle to unscrupulous ticcadars and zemindars to harass their tenants by denying that the person to whom the ryots paid their rents had any written authority to receive payment.

BABOO GIRINDRA MOHUN CHUCKERBUTTY, *2nd Munsiff* of Bhanga, Zillah Furreedpore.

Section 72 interferes with custom in a way detrimental to the rights of property.

Section 77.—The custom as to cutting down trees, &c., planted by the ryot varies; in some localities the landlord takes the whole, in others half. This interference with custom will unjustly sacrifice the interests of the landlord. At the same time the Munsiff "must say that the rule is a necessary one for the poor ryots." He suggests its being enacted, but without retrospective effect.

BABOO MUNNOO LALL CHATTERJEE, *Subordinate Judge*, Moonshedabad.

Section 72.—Omit from clause (*a*) the opening words "under any pretence whatever," and the closing words "approved by the Revenue authorities."

Section 77 (*a*).—A most salutary measure; it settles many disputed points. Omit the *proviso*.

Clause (*b*).—A distinction should be made between trees planted by the ryot himself or inherited and trees which are assets of the jumma. In the case of the former, clause (*b*) will hold good; in the case of the latter, license should be obtained from the zemindar, as cutting down such trees would materially affect the condition of the land, and *salami* should be paid to the zemindar for such license.

BABOO ANANTORAM GHOSH, *1st Munsiff* of Berhampore.

Generally approved. Section 77, clause (5) open to objection.

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Section 77, clause (b) overrides local customs as to a ryot's right to cut down trees. He has no such right at present. But as the provision tends to the improvement of the land, it may be retained with a modification securing half the proceeds of the trees to the zemindar.

BABOO SHAMBHU CHUNDER NAUG, *Munsiff* of Pubna.

Section 77 (a).—A very proper check to the ryot's altering the character of the land. But his right to cut trees extends only to *jungly* trees; as to fruit-bearing trees, custom varies. In some places zemindars have a fourth share, in others half: in Pubna the ryot has no right whatever in such trees. Zemindars may not unfairly be allowed one-fourth share.

BABOO MOTI LALL HALDAR, *Munsiff* of Shazadpore, Zillah Pubna.

Section 77.—Contrary to custom and case-law, but a reasonable concession to ryots, who ought to have power to enjoy whatever they produce, and will be much encouraged to plant trees. The present custom is another instance of custom originating with landlords whose claims could not be resisted.

BABOO KARTICK CHUNDER PAL, *Munsiff* of Nelphamaree, Zillah Rungpore.

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CHAPTER XII.

SECTIONS 81—86.

OF SPECIAL PROVISIONS FOR BEHAR.

Danabundi tenures do not prevail in Bengal, the only tenures paying rent in kind being those of bhag-jotedars who enter into verbal contracts for payment of half the produce, and a class of tenure-holders who pay a fixed rent in kind, called *shajah*. Sections 84 and 85 need not be made general, but the local Government may make them apply where suitable.

BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff*, of Burdwan.

See no good ground for making an invidious distinction between Bengal and Behar. One cause of the change of ryots' holdings in Behar is that a proprietor afraid of losing his hold upon ryots and of the difficulty of enhancing their rents does not allow them to continue in the occupation of their holdings for more than eleven years. But this is the case with petty proprietors only who, if pushed, would cultivate themselves. Comparatively big zemindars cannot manage to revise the settlement of their zemindaries even once during their life-time. They can hardly collect the full amount of the old rent and are compelled to farm their zemindaries to indigo planters or Bhabans and Rajputs, whom the ryot finds too powerful to cope with. After a struggle he yields up a portion of his jote and agrees to pay enhanced rent for the rest.

BABOO MATADIN, *Subordinate Judge* and BABOOS S. S. SAHAI and M. L. GHOSE, *Munsiffs* of Gya.

Another cause of the disintegration of ryots' holdings is increase of population.

The effectual remedy for securing the ryots of Behar, in common with those of other parts of the country, the occupation of their holdings is *first* to give facilities to the Courts to enhance the rent whenever and wherever they deem it fair and reasonable; *secondly*, by discouraging the *farming* system *ticcadars* and *ijaradars* ought to have no power to enhance a ryot's rent or change his holding, but to be mere agents acting on the responsibility

of the zemindar; *thirdly*, facility should be given to indigo planters in acquiring lands.

A chief cause of hardship to the ryot is the dilatoriness of our Courts. By the time he gets redress, he is undone. The Munsiff takes six months to decide the ryot's suit; the appellate Court takes another six months if the case is appealed, and the High Court can never decide an appeal before it under a year from the date of filing.

Section 83.—That whenever rent is payable in kind, it shall be presumed to be one-half of the gross produce unless the contrary is proved, will do much good to the ryots, without any direct encroachment on the zemindars.

Section 85.—When a *danabundy* is filed, the Collector should give a joint notice of it to the ryots concerned to allow them an opportunity of disputing its correctness in the Civil Court; otherwise the zemindar may file a false *danabundy*.

Section 86.—A most unwholesome provision and will prove disastrous. A ryot can well afford to give one-half of the produce of his land, but not to pay its money-value fixed in perpetuity. The bhaoli system prevails in those parts of the province only where land can be got in abundance and the ryot can cultivate a portion only of his jote. Where there is competition for the land, he never takes it on *bhaoli* terms, or, if he does, it is soon converted into a *nakdi* tenure. The matter ought to be left to the improvement to be made by time.

The right of occupancy exists to a large extent in Behar; but cannot be proved by documentary evidence through the ryot's own reluctance heretofore to take pattahs, because they find it safer to deny the real jumma. The three years' rule is not required to protect the ryot; but something else, *viz.*, the insertion of the description of a holding in the plaint and decree, and the statement of its jumma and area in the counterfoil receipts.

BABOO A. C. MUTRA *1st Munsiff* of Patna.

Sections 81, 82, 83.—Most objectionable. There ought to be no difference in the rights of landlords and tenants in Bengal and Behar. For illegal ousting landlord may be fined besides being made liable for costs and wasilat.

BABOO RAMPERSAD *Subordinate Judge* to Shahabad.

The bhaoli, whatever effect it may otherwise have, is useful in this that it prevents

all dispute regarding enhancement of rent. It also gives some interest to the zemindar in the improvement of his lands. It is engrafted in the Behar land system, evidently liked by both zemindar and ryot, and it may not be advisable to abolish it or to pave the way for its abolition. There is one great advantage in the bhaoli system, that the ryot has to pay only half the produce of the land however small the yield may be, unlike the nukdi system, in which the fixed amount must be paid in any case whether the outturn be good or bad.

BABOO NEPAL CHUNDER BASU, *Munsiff* of Buxar, Zillah Shahabad.

The provisions as to bhaoli tenures and rents in kind are very hard to the zemindars. They are already in the receipt of nine-sixteenths of the produce from time out of memory and to deprive them of their vested rights would be inconsistent with the principles of justice.

BABOO DWARKA NATH BHUTTACHARJEE, *1st Munsiff* of Arrah, Zillah Shahabad.

As regards *bhaoli* rent the proportion of actual gross produce paid by a tenant in Behar to his landlord is, as a rule, one-half. Accordingly there is no necessity for the Legislature to interfere.

The provision in section 85 is a long felt desideratum. It is "an experiential fact" that when an unprincipled zemindar is at logger-heads with a ryot he "unscrupulously sets up *bhaoli* or *bataya* allegation" in order to increase his demand, concocts the *danabundi* (appraisement) papers, and then comes to Court to recover alleged *bhaoli* rent for two or three years. To prevent those papers being tampered with, the Collector or Deputy Collector should sign those papers and enter thereon the date on which they are filed.

MY. ABDUL BARRY, *Munsiff* of Bhaugulpore.

Section 82.—Suppose the zemindar takes a portion of a ryot's land against his consent and gives him some new land which the ryot does not like. He prosecutes the zemindar before the Criminal Court; but no ryot of the mouza being willing to brave the anger of the zemindar and give evidence for the prosecutor, the Magistrate finds that the disputed land did not form a portion of the complainant's jote. Suppose after one year, when the ryot's right to recover possession of this disputed land is barred by limitation, the zemindar sues to eject him from the new land as having no right of occupancy, and it then transpires that the new land was given in exchange for

some land on which the ryot had a right of occupancy, but *without his consent*, could the zemindar on that ground (taking advantage of his own wrong) contend that the ryot had no right of occupancy? To obviate such an anomaly, the word "otherwise" (*qu* "or otherwise") might be added after "consent".

Section 85.—What would be the effect of not filing the *danabundi* papers within 15 days in the office of the Collector? Would the suit for bhowli rent be dismissed? or the danabundi be simply excluded from evidence?

BABOO GIRINDRA M. CHUCKERBUTTY, *2nd Munsiff* of Bhangah, Zillah Furreedpore.

Sections 84 *and* 85 may be made of general application where the *borga* system prevails, under which rent is payable in produce to landholders for *khamar* or other lands. In some eastern districts, for instance, Jessore and Furreedpore, when the produce is fit for reaping, both ryot and landlord go to the field with certain *jaukdars* or appraisers, who make an estimate of the total yield, after which the tenant is allowed to cut and carry away the crop, and when the tenants are too many and their lands consist of different varieties, the appraisement papers are only recorded.

BABOO MUNNOO LAL CHATTERJEE, *Subordinate Judge*, Moorshedabad.

Section 84.—To avoid multiplicity of litigation, the preliminary application to the Collector may be dispensed with; the Code of Civil Procedure amply suffices for such cases, and provides a speedy remedy.

Section 85—Unnecessary so far as Bengal is concerned.

BABOO ANANTO RAM GHOSE, *1st Munsiff* of Berhampore.

Section 81.—Three years is too short a period; six years would be a fair compromise, and would make the law uniform in Behar and Bengal.

Section 84, *clause* (*b*).—The double proceeding not approved; it will lead to protracted harassing and costly litigation. The Collector's award ought to be enough; otherwise give only an appeal to the District Judge, as in section 76, clause (*b*).

BABOO ASHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore.

Sections 84 *and* 85.—As some lands in Bengal are let in bhag jotes and the tenant pays rent in kind, it will be of advantage to him if these sections be extended to Bengal.

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CHAPTER XV.

(SECTIONS 95—132.)

OF PROCEEDINGS TO ENHANCE THE RENT PAYABLE IN MONEY BY RYOTS HAVING A RIGHT OF OCCUPANCY OR BY TENURE HOLDERS OR UNDER-TENURE HOLDERS.

BABOO BHOOPUTTY ROY, *Subordinate Judge* of Burdwan.

It will be a great anomaly to allow parties the option of resorting either to the Civil Court or the Collector upon the same question. The advantages offered by the Civil Court are the assistance of a Bar and the right of appeal even to the Privy Council. The appeal to the Commissioner or Board of Revenue, without a right of hearing, would meet with serious objection. Even with the right of appeal to a Civil Court, Act X of 1859 failed, and the operation of Act VIII (B.C.) of 1869 has, without question, been most beneficial. The proposed procedure will not be acceptable.

BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff* of Burdwan.

The abolition of the notice of enhancement would remove the constant source of failure in such suits; but it would deprive the ryot of his most powerful safeguard against excessive demands of rent. This evil would, to a certain extent, be remedied by authoritative tables of rates for all districts.

Concurrent jurisdiction given to Civil and Revenue Courts will lead to conflicting decisions. On the whole, Mr. Dampier's view is preferable.

BABOO AUGHORE NATH GHOSE, *Subordinate Judge*, Dinagepore.

All suits for enhancement should be ordinarily instituted in the Civil Courts, though the Collector should, on the application of the landlord, prepare a table of rates and send it to the Civil Courts. Suits for the determination of the rent payable by individual ryots should be in the Civil Courts, who will be bound to accept the Collector's table of rates so long as the ryots do not prove that they are "entitled by custom or contract, or special equitable consideration, to hold at

more favourable rates." Should the landlord, instead of having a table of rates made by the Collector, institute numerous suits against the ryots of the same village or *mehal*, the District Judge should be empowered to permit the subordinate Civil Court, on application, to refer the landlord to the Collector for such a table.

BABOO MATADIN, *Subordinate Judge*, and BABOOS S. S. SAHAI and M. L. GHOSE, *Munsiffs* of Gya.

Giving a concurrent jurisdiction to the Revenue and Civil Courts will prove very harassing to the zemindar as well as the ryot, specially to the weaker party. Transfer of suits from one tribunal to another must cost him something. The Collector ought to prepare a table of rates and price list, a settlement jummabundy, as well as to measure an estate; but the Civil Court ought with these materials to settle the enhancement question. Do not see why the Revenue Court is better suited for trying a number of similar cases together; the Civil Courts try analogous cases together with consent of parties, and it is a well-established fact that ryots are better protected since the transfer of rent suits to the Civil Courts.

Do not understand why the Collector should hear the ryots' objections twice in preparing a table of rates, once before and once after. The parties should have a right of appeal to the Commissioner.

Section 118—Very hard. It will be enough if the defaulter bear the entire costs.

Section 127.—Costs should not be awarded at the discretion of the Collector or Commissioner, but be borne by the unsuccessful party.

BABOO MUNNOO LAL CHATTERJEE, *Subordinate Judge*, Moorshedabad.

Procedure more complicated, and it would not work well. Sometimes nice questions of title arise which cannot be satisfactorily tried by the Collector. Machinery too expensive, and zemindars would prefer to enhance rent by indirect and roundabout means, as is now done, to invoking the aid of a Court.

II. Proceedings before the Collector to obtain—
(A) A table of rates.
(B) An enhanced jummabundi
(C) A settlement jummabundi.

Some of these provisions may be resorted to in case of agrarian disturbances, or when an auction-purchaser is unable to identify his ryots, and in similar exceptional circumstances. But ordinarily such matters should be dealt with by the Civil Courts.

Section 95, (a) and (b).—Omit the allusions to the Collector.

Sections 99—106.—The jurisdiction of the Civil Courts being retained in enhancement cases, when the grounds are 1, 3, and 4 of section 22, the finding may be left to middlemen, traders and local munduls able to read and write, and other competent persons. They may be appointed by the landlord and ryot in equal numbers, like persons appointed under Chapter 39, Criminal Procedure Code, and required to return a finding of fact to the Court which will give a decree thereon. The second ground of enhancement can be dealt with by the Court with the assistance of its Ameen.

Section 101 (*b*).—This is forcing ryots to litigation, to the neglect of cultivation and the incurring of expense. The contagion of opposition, too, is generally caught by a visit to head-quarters, where legal practitioners encourage litigation.

Owing to famines and the Railway and Telegraph, the market has become extremely uncertain. Properly Bengal has no bazar of her own; the demand in foreign countries and the cost of carriage to the Coast regulate prices. The Collector's table will therefore not prove satisfactory, and its sanction by the Lieutenant-Governor will take time, during which the rates may change. Instead of the ryots petitioning the Collector, he should be empowered to refer the applicant's table of rates to local assessors to be nominated by landlord and tenant.

The opportunity should be taken to rectify the error committed in the disintegration of the village community for the introduction of Civil Courts with their cumbrous and changing procedure.

Section 121 (*b*).—Assessors should be appointed in preference to arbitrators, and their work should be revised by the Collector. But to guard against being overawed, they should hold their meetings far from the Collector, and near the homesteads of the ryots, who may appear before them without incurring cost or neglecting cultivation. The provisions of sections 101(*a*) to 105 (*a*) may apply when ryots refuse to select assessors, and only then.

Section 105 (*b*).—The table of rates should only be *primâ facie* evidence.

Section 106 (*a*) would introduce endless litigation.

Section 95 (*b*).—Empowering temporary farmers to bring enhancement suits objectionable. They are often mere creatures

BABOO ANANTORAM GHOSH, *1st Munsiff* Berhampore, Zillah Moorshedabad

of the zemindars to harass ryots for illegal cesses and with enhancement proceedings. The power should be given to such only as possess a subsisting interest for not less than 25 years.

Section 100.—Of the three classes of proceedings, the first and third are unobjectionable; but the proceedings for an enhanced jummabundi are very different. The *jummabundi* affects numbers of ryots individually, and involves a thousand questions relating to possession, quantity and quality of land, &c. It will set, as it were, whole villages in flames, put great pressure on the Collector and lead to hurry and confusion in the trial, with a result hardly satisfactory. Landlords should be left to sue individual ryots; a course which will be attended with less difficulty when service of notice is abolished and a Table of rates prepared by the Collector.

The procedure prescribed will oust the jurisdiction of the Civil Courts. This is not justified by the reasons urged in its favour by the Commission. It is not apparent what "new general principle" or "new general rule" the Collector will be able to create, which the Civil Courts cannot grasp or the Legislature conceive. If much is to be left to the discretion of the Collector, the same discretion may be left to the Civil Courts who already exercise large discretionary powers and whose decisions in rent suits have produced general content.

The machinery provided is hardly adapted for the work. Collectors are heavily burdened with a variety of duties, and outsiders specially appointed will lack legal knowledge and judicial experience. The work will be left generally to Deputy Collectors, whose investigations will be conducted (section 125) by means of ministerial officers or low paid *amlah*. On this ground-work, the Table of rates will be reared.

No appeal is provided against the Collector's decision as to a Table of rates; and the Commissioner, to whom the proceedings will be referred, will not be bound to hear any party concerned. And even where, as in the case of a jummabundi, an appeal is allowed to the Commissioner, it will be a hardship to the ryots. The Commissioner is ever on the move, and may be stationed hundreds of miles away, and is therefore less accessible than the District Judge; besides that, on

account of his numerous and onerous duties, his procedure must be more dilatory. As in the case of the standard pole, all the Collector's proceedings should be made appealable to the Judge.

Sections 111 and 118 prescribe 10 years as the period within which, on certain contingencies, enhancement proceedings shall not be renewed. This very beneficial provision should be extended to all suits and proceedings for enhancement. Litigation is ruinous to a ryot, and needs only to be maintained sufficiently long to secure the victory to the zemindar. The limit of 10 years should be raised to 15 years.

Section 120.—The Board's rules should receive the sanction of the High Court.

BABOO SHAMBHU CHUNDER NAG, *Munsiff* of Pubna.

Objects to the provision for striking off enhancement proceedings on default of deposit of costs. Such an order will tell seriously against the right of enhancement given by the Bill, while the scale of costs will prove prohibitive.

BABOO JUGGOBUNDHU GANGULY, *1st Munsiff*, Bogra, Zillah Pubna.

The Table of rates prepared by the Collector should be not final and conclusive, but corroborative; the determination being left with Civil Court. Provision should be made for the table to be based on judicial proceedings and not on reports of investigating officers.

BABOO MOTI LAL HALDAR, *Munsiff* of Shazadpore, Zillah Pubna.

The application of the Table of rates in particular cases should be left to the Civil Courts. The elaborate procedure would not suit Munsiff's Courts and subject parties to endless trouble and expense. And it would be almost impossible for many zemindars to have recourse to the Revenue authorities.

BABOO AUSHUTOSH AUDDY, *1st Sudder Munsiff*, Rungpore.

If the Table of rates refers only to Pergunnah rates, they may not be the same for similar classes of land in the district, and may differ even in different parts of the same mehal, owing to no other reason than custom and law. If the rates be fixed, as in Oudh and the Punjab by competition (the cottier system) they will be fixed according to the demand of the people (the Legislature fixing a *maximum*), and will rise or fall according to their actual wants.

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CHAPTER XVIII.

SECTIONS 165—225.

OF THE PROCEDURE IN SUITS FOR THE RECOVERY OF ARREARS OF RENT, &c., AND CERTAIN OTHER SUITS.

BABBO BHOOPUTTY ROY, *Subordinate Judge*, Burdwan.

Objects to the provision allowing the Judge to "take note of the substance of the evidence of witnesses." This will not enable the Appellate Court to judge of the correctness of the decision on a question of fact.

BABOO PROMOTHO NATH BANERJEE, *2nd Munsiff*, Burdwan.

The procedure cannot be made more summary without injustice being risked.

The section prescribing the mode of hearing is well considered, but a clause might be added enjoining the immediate settlement of issues.

BABOO AUGHORE NATH GHOSE, *Subordinate Judge*, Dinagepore.

Section 168.—It would be very inconvenient to enter the boundaries of land in the register.

Section 75, Civil Procedure Code, may be made applicable to cases under Chapter XVIII.

With reference to the silence of section 101 as to the order in which the parties are to address the Court, proposes a method [*vide* his letter No. 74, dated 30th September 1880].

Notices two important changes—(1) as to the manner of recording evidence (section 192), and (2) the taking away of appeals in certain cases (section 220.) As to the first, objects to a mere memo. of evidence being allowed to be taken in appealable cases, as the Appellate Court, besides having no opportunity of observing the demeanour of the witnesses, would thereby be deprived of having before it all the answers of witnesses fully recorded. Suggests that Civil Courts may be empowered to exercise final jurisdiction only in simple rent suits, or rent suits with the prayer for ejectment under section 152, in which defendant's plea is only that of payment or tender of Rs. 50; and in such cases may be allowed to make a memo. of depositions.

BABOO MATADIN, *Subordinate Judge*, and BABOOS S. S. SAHAI and MOTI LAL GHOSE, *Munsiffs* of Gya.

Do not think it safe to allow only the substance of a deposition to be taken down. A speedy trial of rent suits better than a summary trial.

BABOO RAM PERSHAD, *Subordinate Judge*, Shahabad.

In section 207 the law ought to provide up to what amount the landlord is to bid. As the section stands at present, he may bid a rupee only, and what would the Court have to do then?

It is better to define more accurately the term "khoodkhast" in section 210.

MOULVIE ABDUL BARRY, *Munsiff* of Bhaugulpore.

Section 168.—There is no reason why Section 58, Civil Procedure Code, by which copies of plaints are served upon defendants along with the summons, should not be introduced into the draft Bill. The defendant ought to be informed of the allegations made in the plaint.

A summary procedure will not lighten the hands of the first Court, for, notwithstanding section 192, the first Court will be obliged (seeing an appeal lies) to take down the whole of the evidence, so as to point out contradictions. And, as regards section 220, even in deciding cases up to Rs. 10 finally, the Munsiff will have to write a full judgment, so that the District Judge calling for the record may know the reasons of the decision.

No provision that *ex-parte* cases are to be decreed without taking any evidence. Why should valuable time be wasted in taking evidence, when they must be decreed?

Not advisable to set down cases for final disposal at first hearing. The following case actually occurred in this Munsiff's Court. A landlord sued for a few rupees as arrears of rent due under a kabuleut. The case was set down for final hearing. Plaintiff cited all the witnesses of the kabuleut, some from great distances, at the cost of about Rs. 25. On the day fixed defendant appeared and admitted the kabuleut, but declined to pay the Rs. 25, on the ground that he had never intended to deny the kabuleut. Plaintiff said he did not know whether defendant would admit it or deny, and so had come prepared.

He would propose a procedure like the following. Let the summons to defendant warn him as to *ex parté* decision. If he does not appear, let Court decide case *ex-parte* with costs and interest, unless it thinks evidence necessary. If defendant

appears and contests, a short date should be fixed for hearing witnesses on disputed points only.

Selected Munsiffs should decide cases up to Rs. 10 according to Small Cause Court procedure.

Section 188.—If the Court cannot adjourn a case for want of time, it will be very awkward.

Sections 192.—In appealable cases the evidence should be recorded in full, for the evidence of two witnesses may be the same [in substance], and yet there may be difference in details which may affect the credibility of the testimony.

BABOO KOYLAS CHUNDER MOZOOMDAR and BABOO RUSSICK CHUNDER ROY, *1st and 2nd Munsiffs* of Mulfutgunge, Zillah Furreedpore.

Section 208 (3).—Eight days is too short a time for the payment of the purchase-money in many cases, and the difference of rule in the two classes of decrees will sometimes create confusion.

Section 220.—Object to finality being given to decisions in certain cases. Such finality is generally disliked in connexion with Small Cause Courts where the same safeguards exist. If finality is given, it should be only in the simplest suits for arrears, where the question is what is the sum due? The amount of the claim should not be the standard, because very important questions may be brought for decision in rent suits of small value, such as suits on kabuleuts or other contracts.

Section 224—should not be enacted. When a party is poor he brings his own witnesses. The liberty to get processes served free of cost will be abused.

The summary procedure proposed is hardly worth the name, if we except that part of it which provides that depositions are not to be recorded at length, and this again will deprive appealable cases, *i.e.*, all above Rs. 10, of the benefit of an appeal, unless the procedure of Regulation VIII of 1819 (sections 133—145) or something virtually the same, be held worth adopting for suits for pure arrears of rent. Sketches a procedure which he would substitute.

BABOO GIRINDRA M. CHUCKERBUTTY, *2nd Munsiff* of Bhangah, Zillah Furreedpore.

The omission of certain sections of the Civil Procedure Code is not accounted for, *e.g.*, 43, 30, and Chapter XXXVII. If section 43 can be applied anywhere with the greatest advantage, it is to rent suits and the reference to arbitration would prove very useful in ending lengthy litigation.

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The procedure proposed will not be more summary than the existing practice. At present cases fixed for hearing on a single day, if not unusually large, are all decided on that day, if *ex-parte*, &c. If contested, they are either decided if the parties are ready, or if the unpreparedness is their own fault, otherwise they are adjourned.

Section 203, 208 will encourage fraud and increase litigation. The same consequences should follow sales for arrears of rent as follow sales for arrears of revenue, and should apply only to sales of entire estates, not of portions.

Section 210 (*and Article 16, Schedule III*) allows one year's time for the avoidance of encumbrances; the present law (Article 121, Schedule II, Act XV of 1877) allows 12 years. The change proposed has very little recommendation.

BABOO JUDOONATH ROY, *Subordinate Judge.*
BABOO KEDAR NATH MOZOOMDAR, *2nd Subordinate Judge*

Section 192.—In appealable cases depositions of witnesses should be taken down *in extenso.*

BABOO KEDAR NATH CHATTERJEE, *1st Munsiff.*
BABOO JOGENDRO NATH DEB, *2nd Munsiff*, Zillah Midnapore.

Section 220.—When there is a dispute in respect to the relationship of landlord and tenant an appeal should be allowed, and where no such question is involved, or any of right to enhance or vary the rent, the decision may be final if the claim does not exceed 20 rupees.

BABOO SASI BHUSAN CHOWDRY, *2nd Munsiff* of Contai, Zillah Midnapore.

It is only in contested rent suits that comparative delay generally occurs. These are all appealable, and must be tried according to the procedure laid down in the Code, which contains elaborate forms and allows a wide latitude for postponements. When Deputy Collectors used to try them they were not required to record the evidence in full, and they had not such a learned bar as at present exists. Under existing conditions Deputy Collectors could not decide such suits faster than, or perhaps even as fast as, the Civil Courts. A summary procedure therefore is necessary so far as it consists with justice. The Commission has done almost all that could be done.

Section 165.—If defendant admits tenancy, the special procedure will apply. If he denies it, this chapter will not apply *until tenancy is proved*, and therefore evidence must be gone into, and the trial must be like an ordinary one. This would cause an anomaly in the procedure, and

the cases in which denial of the relationship is the only defence, form more than a third of the total number of contested rent suits, and in these cases the special procedure will not be followed.

As regards the proviso in section 165, at what stage is the District Judge to interfere? The procedure to be followed can only be determined at the first hearing when the defendant states his defence, and as that day is also the day for final hearing, and as adjournment cannot be granted except for the reasons mentioned in section 188, the case will be decided before application can be made to the District Judge. Where tenancy is denied, such application will not be necessary. Suggests omission of the words "when the relation of landlord and tenant is admitted, or proved to subsist between the parties."

Section 204.—Add the words "before the lot is knocked down."

Section 220. For 10 rupees substitute Rs. 25. The great majority of rent suits are not below 10 rupees, which is a limit easily evaded by illegal interest being added to the claim. Let summary power be given up to 25 rupees, and contracts of tenancy be reduced to writing, and the greater portion of the present difficulty will disappear.

BABOO MUNNOO LAL CHATTERJEE, *Subordinate Judge*, Moorshedabad.

Section 165.—The Court which is to decide the case ought to determine whether a summary procedure would apply or not; the reference to the Judge is unnecessary and will consume time. It will prove also harassing and expensive.

Section 192.—He would do away with section 192, and suggest a procedure sketched in his report generally approved.

BABOO ANANTO RAM GHOSH, *1st Munsiff*, Berhampore, Zillah Moorshedabad.

Section 203, clause (*c*). The period of 20 days after posting notice in Court-house rather short. It should count from date of service upon land.

The chapter in Civil Procedure Code upon arbitration should be extended to rent suits. It is the best mode of settling disputes and an ancient institution of the country. *Punchayets* afford a cheap and simple mode of trial, and economise the time and labour of the Courts.

Section 220.—A good and commendable provision; but the limit might with advantage be raised to 50 rupees, as in Small Cause Court suits. As all questions of title (section 223) and variation of rent

are saved, the decision will only affect the amount sued for. and furnish no ground of complaint.

Abolition of distraint approved. The system has been much abused. Attachment before judgment (section 180) will meet all legitimate needs of landlords.

BABOO KORUNAMOY BANERJEE, *1st Munsiff*, Sudaiam, Zillah Noakhally.

The general complaint of zemindars has been as to the delay in the trial of rent suits and execution of rent decrees. The draft Bill prescribes a sort of summary procedure where the relationship of landlord and tenant is admitted. But it has made the procedure in the execution department more complex and dilatory. What is the good of doing a thing *twice*, as prescribed by sections 206 and 207? If the Legislature wants to respect the rights and privileges of people who hold sub-leases, or have alien or any subordinate interest under the defaulting holder, let all such sales be placed on the *same footing* with execution sales under ordinary Civil decrees, so that only the right, title, and interest of the defaulter may be sold, and nothing else.

BABOO SAMBHU CHURN NAG, *Munsiff* of Pubna.

The summary procedure is not likely to be beneficial, and carries the risk of the injustice to which such procedure is generally open. Munsiff would omit this part of the Bill.

BABOO JUGGOBUNDHOO GANGULY, *1st Munsiff*, Bogra, Zillah Pubna.

Approved, for it does not make any material changes in the procedure. It will not apply to suits for ejectment by landlords, or for recovery of possession by tenants.

BABOO MOTI LAL HALDAR, *Munsiff* of Shazadpore, Zillah Pubna

The procedure in the trial of ordinary rent suits cannot be simplified in the direction of summary trial; to make a trial short or long, much depends upon the working of our Courts. The only exception he takes to the proposed procedure is where it lays down that evidence need not be taken at length. This will take away from the value of the appeal. The memorandum should only be allowed in non-appealable cases.

BABOO AUSHOOTOSH AUDDY, *1st Sudder Munsiff*, Rungpore

Suggests the introduction of a section like section 617, Act X of 1877.

If Revenue agents be allowed under section 225 to conduct rent cases, there ought to be some distinction between them and the Pleaders of the Lower Courts, either as to the nature of the suit or the amount of the claim.

Govt. Central Press —No 537 H C—14-2 81.—50.

No. 515, dated Calcutta, the 3rd March 1881.

From—J. CRAWFURD, Esq., Registrar of the High Court of Judicature at Fort William in Bengal,

To—The Secretary to the Government of Bengal, Revenue Department.

IN continuation of my letter No. 468, of the 26th ultimo, I am directed to forward in original, a letter No. 99 of the 22nd idem, from the Officiating District Judge of Cuttack, submitting remarks and suggestions on the provisions of the proposed Rent Bill.

No. 99, dated Cuttack, the 22nd February 1881.

From—A. W. COCHRAN, Esq., L.L.D., Officiating District Judge of Cuttack,

To—The Registrar of the High Court of Judicature at Fort William in Bengal.

I HAVE the honour to submit for the consideration of the High Court, some remarks and suggestions on the draft of the Bill to amend the law of landlord and tenant.

The delay that has occurred was owing to the fact that the members of my local Bar were unwilling to submit their views to me until they had consulted the leading zemindars of Orissa on the subject. I was anxious to get the opinions of the gentlemen referred to, because they are not only intelligent and well-instructed, but, as zemindars and landholders, peculiarly competent to give an opinion. In this report I have incorporated some of their views with my own, and, when necessary, specified their opinions on certain points. I follow the order prescribed in the circular of the Government of Bengal calling for a report on the draft.

1. The Bill is not intended, I observe, to extend to any part of the Division of Orissa.

I would not recommend that it should, for the present at least, with the exception of sections 84 and 85. The condition of the relations between landlord and tenant in this province is very different indeed from that in other places in Lower Bengal. The Ooriya is of a peculiar and distinct race and genus from any of the Bengalis or the Beharis. The settlement is a temporary one. The zemindars are very numerous, and petty as a rule. The Act X of 1859 has worked fairly well, and among a people so backward and intensely conservative as the Ooriyas are, and so ill-supplied as they are with good legal advice in the mofussil, the introduction of a change or changes so considerable as those proposed in the draft is much to be deprecated.

2. In some of the northern pergunnahs of Balasore, the introduction might perhaps be made; but, as I have said, no where else in the province for the present. In connection with this, I would observe that the Orissa of the older Regulations must have included Midnapore and only part of Balasore, and could not have included any other part of what is generally called Orissa now.

3. The principles laid down in the Bill, whether or not they are to be deduced from past legislation, go, it must be admitted, very far indeed, and run counter to the ideas generally prevalent as to the rights and duties of landlords. The landlord of Bengal, as a rule, never dreams of improving his estate or of laying out the sums that in the United Kingdom a landlord cheerfully expends for the good of the land; and his assistance in securing the peace of the country, and the existence and stability of good Government is becoming almost daily less necessary. He also, as a rule, pays but little towards the support of the Government, the revenue he pays never having belonged to him or his predecessors. All this must be admitted, but, on the other hand, the class to which he belongs has been created by us, and has been allowed to flourish for three quarters of a century. What we made, we may perhaps unmake; but we should not be in a hurry.

4. Much money has been sunk in buying zemindaries, and considering the value of capital in Bengal, especially in the mofussil, any serious deterioration in zemindari property would give occasion to much dissatisfaction, not altogether unjustified. The changes that will be produced by the Bill, if it becomes law, in the zemindars' position will be very great and to them very prejudicial.

5. The Government looks to the zemindars for the realization of its revenue; any sudden change in their condition for the worse will very soon affect the revenue of Government in a way that may be most embarrassing. The people of the east of Bengal are generally not well-affected to their landlords. They have plenty of money and are very litigious. The introduction of the Bill among them would give birth to a large mass of litigation, ruinous in very many cases to the people to whom Government has to look for its land revenue.

6. The ryot needs extraordinary protection much less now against the oppression of his landlord than he did in 1859. He is now better acquainted with his rights, and his remedy in case of wrong, and has far more facilities, owing to the increase of sub-divisions and moonsifees, for righting himself. Act X of 1859 was the cause of an enormous amount of litigation, and, if it did not introduce, made public, and made law, some principles not very widely known or much acted on before. This Bill contemplates very much greater and more sweeping changes at a time when there is much less necessity for them. Some change is wanted, but not what the Bill would introduce.

7. The members of my Bar consider the Bill revolutionary and subversive of the principles of the Permanent Settlement, and likely to be ruinous to the landlords, as I have indicated. I do not go quite so far, but that it will ruin the landlord, I quite think.

8. I pass to the consideration of the details of the Bill. My objections to it generally might be stated at more length, but as the question will receive a thorough consideration by others with more recent acquaintance with the land system of Bengal than myself (I have been out of Bengal for a year, and for the 18 months before that I was employed almost exclusively in sessions work), I need not dwell on it any further.

II.—The definition of rent in section 3 of the Bill, does not clearly include what is payable by a tenant or cultivator other than a right-of-occupancy ryot. This definition will rule the definitions of landlord, land, lease and kabuliat.

III.—In section 11, I would omit the word 'single' before 'demise.' If the Bill passes into law, speculators all over the country will begin to take steps to get possession of land held by the kind of tenure which is so highly favoured by the Bill as the right of occupancy. I do got see anything in the Bill, as it now stands, to prevent them from, in course of time, getting nearly all the land of the country into their hands. Such people would have no pretension to being treated as cultivating ryots. The right of occupancy should be purchaseable only by the landlord, and a *bonâ fide* cultivator, and no one should be allowed to get more land held by that tenure than he and his family, aided by servants, could keep in cultivation. I am prepared to accept the line of distinction between right-of-occupancy tenures and under-tenures, but I would provide that no single man should in future be allowed to have in all more than 50 bigahs, or perhaps 75, as right-of-occupancy ryot.

My Bar argue eagerly in support of leaving right-of-occupancy rights as they now are. I think some change is necessary as I have indicated. Giving a right of occupancy in other than agricultural land is a new provision much objected to by the Bar. I think it ought to be given, but not in towns. Special rules ought to be made for town holdings.

IV.—I do not observe any provision against the continuance of that pernicious custom so common in Mymensigh and Backergunge—zimbadari—or a ryot of one landlord selling his holding to another landlord. So far as my experience goes, and I have some knowledge of both districts, the custom is nothing but hurtful to the public, and prejudicial to the peace of the district, while productive of very little real advantage to the tenant. I believe that legislating against the custom's further continuance would be prejudicial (and that too in no illegal way), only to the violent and unscrupulous landlord, who wishes to annoy and ruin his neighbours.

The Bar argue in support of leaving the provision of Act X as to tenures alone, and object to the limitation imposed on the landlord's right to enhance. I do not agree with them. I would accept the Committee's proposal. They argued that farmers should have the same powers as landlords; but here too I disagree with them. In some districts violent men make a profession of farming.

V.—Sections 8 and 18 are founded on a High Court ruling, I think, given in a chur case from Chittagong. The principle laid down in that ruling has been confirmed in some other cases. I would, however, protest against its being so generally and authoritatively enunciated as in this Bill. Middlemen and ryots holding land on the banks, or in the vicinity of the great rivers, would profit occasionally by the provisions referred to, to an extent that could not have been contemplated by the Committee, and which they could not in justice ask for if it were not law. On the other hand, they would run no risk of a proportionate loss. They would stand to win enormously and lose little. Why should they be so favoured as against their landlords, and, as compared with others of their class, with lands elsewhere? A small right-of-occupancy ryot or middleman on the banks of one of these rivers might acquire an immense area at a very low rent of the finest alluvial land. I would leave to the Civil Court the assessment of the rent payable for the accreted land. None of the provisions in the Bill, so far as I can see, could be made use of by the landlord to get a fair share of the gifts of fortune in such a case.

VI.—I would not have any class of right-of-occupancy ryot but one. The undertenant of a right-of-occupancy ryot might be allowed, if his landlord insisted on ejecting him, three years' notice to quit. The Bill as it stands would only result in multiplying middlemen.

VII.—It would be but fair to limit the succession to the holding of a deceased right-of-occupancy ryot to his descendants and more immediate collaterals.

The Bar argues against the right of the occupancy ryot being allowed to sell, give, or devise his holding. I agree with them that unrestrained facilities for parting with such tenures will result in putting them into the hands of speculators, but I do not think that right-of-occupancy ryots should be wholly prevented from disposing of their tenures if provision is made against land speculators getting hold of them.

VIII.—In the case of ejectment for breach of stipulation in the lease, I would leave the question of awarding compensation entirely to the Civil Court, and in section 21 I would raise, if not do away with, the maximum.

IX.—Agriculture follows the seasons in India. Notice to quit should be served with reference to the season, not the time of year. The Ooriya year begins in September.

The Bar argue against allowing compensation at all, and suggest Pous as the time when notices to quit should be served.

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X.—Instead of the provision relating to ryots of three years' standing, I would suggest that ryots holding for 6 and less than 12 years should not be liable to be turned out except on three years' clear notice. That boon would be a sufficient one to the occupiers. A man holding less than six years, I think can hardly be held to have any great attachment to the soil. Cnmpensation I would not award, except in cases where it could be claimed under the law at present Three years would give him time to get another holding and reap all the advantage he could well expect from his improvements, and would give the landlord time for reflection and consideration and prevent hasty and spiteful ejectments.

XI.—The materials of his house or houses I would allow an outgoing tenant to take away, and perhaps such trees as he had planted.

The Bar argue against his being allowed to remove trees, especially fruit trees.

XII.—I would propose leaving the relations between landlords and tenants where the latter are holders for less than six years quite undisturbed.

XIII.—The position of a ryot who had held for 12 years under a mokuraridar let in by a mohunt or a Hindu widow with a life-interest does not seem to have been provided for.

XIV.—The Bill has not defined what position exactly an under right-of-occupancy tenant would occupy after his landlord's death without heirs, and the falling in of the superior tenure in consequence.

XV.—I see no reason why the tenant of a mukuraridar or istamrardar (not let in by a person having only a life-interest like a mohunt or Hindoo widow) should not be able to acquire a right of occupancy.

XVI.—Tenants throughout Bengal are much more able to take care of themselves than 20 years ago. It would be much better to allow contracts than to drive a landlord to make his tenants who had acquired no rights to keep moving for fear they should acquire them by settling. The provision as to registration sufficiently provides against fraud. The fairness of the terms might be left to the Civil Court to decide on. The onus to be on the landlord.

XVII.—I would accept the views of the majority of the Committee as regards sections 22-25.

XVIII.—The work likely to be thrown on the revenue authorities will be very great. It is to be hoped the more important part of the work will be done in nearly every case by a European. The sub-divisional officer now-a-days generally knows the people and the country. The Collector very often knows neither.

XIX.—I am adverse to awarding compensation as a rule. Improvements by tenants are very rarely made to my knowledge (I have served for some years in sub-divisions in Bengal and Behar), and are always petty and inexpensive. In the case of persons taking up land for reclamation, written agreements are nearly always made with the landlord. It does not seem fair to allow compensation in case of ejectment on account of breach of a reasonable condition in a lease. The landlord should prove to the Court the reasonableness, but that having been done, the Court should have full discretion as to giving or withholding compensation.

The Bar argued against allowing compensation and permitting any alteration in the condition of the land unless with the landlords' consent. I agree; permanent alterations should not be allowed even to right-of-occupancy ryots. The Bill favours the ryots unduly in many ways.

XX.—If the Bill becomes law, all documents relating to land will be registered, of course at the ryots' expense, and leases will be made out in writing more freqnently than heretofore. The expense of cultivating will thus be increased to the ryots generally. The advantages of registration now are widely known and appreciated, but it is a fact that it is not used in many cases on account of the cost in time and money. I argue from this fact the Bill will cause an increase of expenditure to the labouring classses, if not intolerable, very great. An unprivileged tenant will have to go to much expense in registering documents, or be always on the move.

XXI.—The percentage prescribed as a maximum in section 42 is low, and the section not very clear. Is enhancement permissible by it within ten years of the creation of the right of occupancy?

XXII.—The rules as to merger will not, of course, be retrospective.

XXIII.—Section 98(*b*) should be made more clear, otherwise there will be much doubt as to the exact duties of the Court under it.

XXIV.—It would be well to compel landlords not only to provide themselves with receipt cheque-books, but to deposit in the Collectorate a sample of the forms used by them, and report periodically the number of receipts issued. The receipts should be serially numbered. This would be a great help to the Courts in cases where the genuineness of a receipt is disputed. The Government might with advantage undertake to furnish receipt cheque-books, charging a small fee for them to cover the cost of printing, &c. In the Khorda khas mehal this is done, and the practice has been found to work very well and prevent much roguery on the part of the sarbarakars. In one case, a sessions case that happened last year, the advantages of the practice very clearly appeared.

XXV.—Section 60 is not very clear as to the effect and nature of a receipt granted in cases where it afterwards appears that the tenant has made a false declaration. Notice of deposit having been made should be given at the thana and the Moonsifee cutcherry nearest to the land. Small landlords rarely go to the Collector's cutcherry, and cannot afford to permanently employ an agent.

XXVI.—The Bill does not, I think, prescribe how the cost of measurement in order to ascertain the share of the rent among coparceners is to be met.

XXVII.—Section 77 goes quite too far. A tank might not be in any way an improvement to the lands of a holding, although it might suit a ryot's convenience to make one. The burden of showing that the lands have benefited by an alleged improvement should be on the ryot.

XXVIII.—In section 91, the word 'duly' is made to imply a great deal, and there will be much difference of opinion as to its exact meaning and extent.

XXIX.—The work thrown on the Revenue officers will be very great. It will be necessary to create a department like the Settlement Department in the North-West, if it is decided to do the work thoroughly well. As I have said the Collectors will be found to have little of that peculiar and exact and intimate knowledge of the mofussil required. The Collector of Bengal, with his numerous sub-divisional officers and subordinates, occupies the position of a Commissioner (as that officer used to be); his time is taken up with report writing and statistics. For drawing out a table of rates or a jummabundi, the Collector or other officer should have a close acquaintance with the mofussil. I concur with Mr. Dampier in his views on this Chapter, see No. dated 5th June 1880. The Civil Courts with reliable tables of rates could decide all cases likely to arise. A settlement jummabundi should be left to the Collector to make.

XXX.—Do the illustrations to section 136 sufficiently explain the full meaning of the words "sufficient plea"?

XXXI.—In section 175, it should be provided that the Court shall record the grounds of being satisfied.

XXXII.—In section 210, I would propose that a provision be inserted that encumbrances made by the (written) authority of the landlord subsequently to the letting of the tenant into the land, should be protected from cancelment by a purchaser, only when notice shall have been given him at or before the time of sale.

XXXIII.—The procedure proposed is sufficiently summary. I have no further remarks to offer about it.

The Bar object to it as being cumbrous, and propose the Small Cause Court procedure as worked in Calcutta.

XXXIV.—Act X is wholly repealed by Schedule No. I. Is it not necessary to make an exception in the case of the province of Orissa, or is that sufficiently done in the earlier sections?

XXXV.—In Schedule III I would propose a limitation of six months instead of a year, in sections 5, 6, 7, 8, 9, and 18. It is expedient to have such disputes quickly settled.

XXXVI.—As regards the registration of tenures, I forgot in the proper place to remark that it ought clearly to be set forth who is to pay the fee, and what procedure is to be followed supposing there are rival applicants, and how the dispute is to be settled.

XXXVII.—The Bar objected to the provision as to instalments, and would have the ryot pay all the rent due for the year within the six months from January to June. I see no reason to concur with them. They also argued that 12 per cent. on arrears was low. It may be low, but I don't think the Courts ought to award more unless where there is an express contract.

XXXVIII.—They argued in favor of distraint being retained for unprivileged ryots. The landlord certainly will be prejudiced by the removal of the provisions relating to distraint from the law, but they have been much abused, and I think ought to be done away with.

XXXIX.—In the case of coparceners they propose that no single ryot be allowed to move the Judge under section 165, but such power be given to a body of ryots only. If the section does empower a ryot to move the Judge to appoint a Manager, I agree with the Bar. By the law as it stands, coparceners will be liable to be harassed by an enemy without difficulty. They would extend the section so as include right-of-occupancy ryots.

XL.—The Bar argue that a ryot ejected for good cause should lose the crop on the ground, but a provision of this kind would be abused by the landlords.

XLI.—They object to the landlord under sections 90 and 91 having to pay interest at the rate of 12 per cent. while the tenant is to pay only at 6 per cent. In some districts the ryots are as often likely to be the aggressors as the landlords certainly, but, throughout Bengal generally, the landlords are more likely to be the offenders.

XLII.—Objection was made to the double jurisdiction set up by the Bill, but I see no reason for objecting to it, at present at least. They objected to the limitations as to the enhancement of rent imposed on landlords, and argued that it should be left to the Courts. I think so too. The Bill is too sweeping and too general for the requirements of such a country as Bengal, where there are so many different peoples not all in the same position as regards progress. They also argued that the zemindars, in cases where there were many grades of under-holders, would find it impossible to enhance unless special facilities are given them in the law. The argument deserves attention; I do not think it has been considered by the Committee.

N. T. W.—Reg. No. 14334J.—132—5-4-81.

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SCHEDULE II.

Reports and Memorials received on the Revised Draft Bill prepared by Mr. H. J. Reynolds on Special Duty.

A.

By Selected Officers consulted.

1. From the Commissioner of Bhagulpore, No. 5459, dated 30th March 1881.
2. „ „ Collector of Mozufferpore, No. 45, dated 8th April.
3. „ „ „ of Shahabad, No. 172, dated 25th April.
4. „ „ „ of Dacca, No. 125, dated 19th April.
5. „ „ „ of Sarun, No. 100, dated 21st April.
6. „ „ „ of Backergunge, No. 142, dated 25th April.
7. „ „ „ of Durbhunga, dated 15th April.
8. „ „ Commissioner of Burdwan, No. 6, dated 26th April.
9. „ „ „ of Patna, No. 9, dated 26th April.
10. „ „ Collector of Noakholly, No. 127, dated 30th April.
11. „ „ „ of Bankoora, No. 155, dated 3rd May.
12. „ „ Commissioner of Dacca, No. 62, dated 4th May.
13. „ Mr. Finucane, C.S., dated 9th May.
14. „ the Collector of Burdwan, dated 13th May.
15. „ Mr. H. L. Dampier, dated 19th May.

B.

By Non-official bodies.

16. From the British Indian Association, dated 18th April, with note on the same by Mr. Reynolds.
17. From the 'Ryots and Subjects' (of Howrah) in favour of the Ancient Settlement of Land Laws.
18. From the Ryots of Burdwan, Beerbhoom, Hooghly, and the 24-Pergunnahs.
19. From the Indian Association, dated 27th June.

H. M.—Reg. No. 3947J—150—21-7-81.

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No. 5459R, dated Bhagulpore, the 30th March 1881

From—G. N. Barlow, Esq., C.S.I., Commissioner of the Bhagulpore Division and Sonthal Pergunnahs,

To—The Secretary to the Government of Bengal, Revenue Department.

Referring to your No. 574—235LP, dated 1st instant, I have the honour to state that having carefully examined Mr. Reynolds' Rent Bill, and memorandum forwarded therewith I have no remarks to make.

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No. 45G, dated Mozufferpore, the 8th April 1881.

From—C. F. Worsley, Esq., Collector of Mozufferpore,

To—The Secretary to the Government of Bengal, Revenue Department,

With reference to your letter No. 574—235LR, dated 1st March 1881, forwarding "a copy of a memorandum and revised Bill (chapters I to XII) drawn up by Mr. Reynolds, in communication with Government," and requesting me to submit any remarks that I might wish to make upon the Bill as it now stands, I have the honor to report as follows:—

2. *Sections* 6 *and* 16.—The change proposed by these sections is one which will scarcely commend itself either to the advocates or opponents of the existing law. I strongly object to the change for two reasons.

(1.)—Any alteration of the law which affects limitation should in common fairness have only prospective, not retrospective, effect.

(2.)—If the presumption proposed by these sections be considered generally fair, it should not be relaxed in the interests of the class of auction purchasers.

3. In support of my first objection, I may observe that, as by section 4 of Act VIII (B.C.), 1869, payment of rent at one uniform rate for 20 years is sufficient to raise the presumption that the rent has been unchanged from the time of the Permanent Settlement, ryots hitherto have had no special inducement to preserve receipts for more than 20 years. If they have acted like ordinary business men, they will have carefully preserved the receipts obtained during the last 20 years and will have probably been content (if able) to retain a few odd receipts of earlier periods. To tell such ryots suddenly that they must produce receipts for 40 years in order to get the benefit of a presumption which they have hitherto gained by production of receipts for 20 years, is much the same thing as to suddenly tell a man who has carefully preserved his tradesmen's receipts for three years that the period of limitation for tradesmen's suits will be extended from 1st May 1881 from three years to six years, with retrospective effect. It it be thought desirable (and, for my own part, I think that no ryot should be deprived of any of the few privileges which he now possesses) to do away with the 20 years' presumption, it is only fair to do away with it *gradually* and after due notice. If, for instance, the Bill should become law in 1882, the year 1862 should be substituted for 1839 in section 6, clause (*b*). I have, however, little doubt myself that the framers of Act X, 1859, and Act VIII (B C.), 1869, fixed the term of 20 years on good practical grounds. Those who have seen the wretched paper and ink which are used for the writing of receipts in the mofussil will thoroughly appreciate the difficulty of preserving them even for 20 years, and will probably hesitate to admit the possibility of preserving them in a mud hut or in a thatched roof for so long a term as 40 years. In the absence of receipts, a ryot will be forced to have recourse to oral evidence for the purpose of proving what rate he paid in 1839. On the commencement of the Act, no doubt a few old men of 60 years and upwards will be found in most villages, but by the year 1900 there will probably be no living witness in any village, nor any receipt in existence to show what rent was paid by any ryot in 1839. This objection will apply with still greater force to cases of "bhaulee" tenure (*vide* section 15, explanation 1), as receipts are not given for delivery of produce.

4. With regard to my second objection, I may remark that the practice which zemindars adopt of purposely making default in payment of Government revenue, and of repurchasing their estates at auction in the name of some servant or relative, seems to have been entirely overlooked. During the last few years, several zemindars in this district have thus defaulted and repurchased their estates at auction in order to get rid of the effects of a Privy Council judgment. At the last sale day in this district, Mr. Lethbridge, Manager of Otter factory, repurchased an estate which he had allowed to be put up to auction, because he was in doubt whether the co-sharers from whom the estate had been privately purchased represented the entire body of owners. At auction the estate fetched double the amount which he had paid to the former owners, but as the proprietor of the factory was the recorded proprietor, the surplus sale-proceeds would go back to the factory. The only loss on the transaction was the stamp duty on the sale certificate. While, therefore, there are such facilities for fraudulent conduct on the part of zemindars, it would be most unfair to make any special concession to auction purchasers. A zemindar who wanted to enhance the rents of ryots possessing receipts for 20 or 40 years, would simply make default in payment of Government revenue, would purchase his own estate at auction through a relation or servant, and would then become entitled to enhance the rents of the ryots.

5. *Section* 17.—This section is a vast improvement on the provisions of section 18 of the Commission's Bill, and seems to me perfectly equitable on the supposition that a zemindar himself has no natural right to all accretions to his estate.

6. *Section* 18.—The provisions of this section are excellent, but I would retain the old familiar term "resident," defining the expression "resident ryot" in the same words in which the expression "settled ryot" is now defined. Between the words "from" and "the" in the fifth line of explanation I, it might be advisable to insert the words "any portion of," and, in place of the word "tenant" at the end of the explanation, to substitute

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the words "separate tenancy." I think the alternative (of a certain distance) in the last half of the explanation is a first-rate idea, and solves the difficulty which most officers have felt in framing a satisfactory definition of the words "resident ryot."

7. *Section* 19.—I heartily approve of this section.

8. *Section* 20.—There will apparently be two classes of occupancy ryots.

(1).—Settled ryots.

(2).—Ryots who have held the same lands for 12 years previous to the passing of this Bill, and whose right of occupancy has been judicially established. Of these ryots some again will fall within the definition of settled ryot. *Query.*—Must the purchaser of a right of occupancy, which has been acquired under this Act, be or become a "settled ryot" in order to retain the right? I presume that this question must be answered in the affirmative. If so, it will be very necessary to keep up distinct registers of the two classes, and at all public sales to notify the class to which the occupancy ryot belongs. The holding of an unsettled occupancy ryot will (if my view be correct) command a higher price than that of a mere settled ryot.

9. *Section* 56 (*a*).—Reading this section with section 101, and having regard to the wideness of the term "*any cultivator*" in the latter section, I feel some doubt whether the words "any other process for the recovery thereof" in the former section, would be held by a High Court to include distraint. I presume that they are intended to include it.

10. *Section* 84.—The words "*no* person *not* having an interest *not* less," &c., seem a little involved. Two negatives are said to constitute an affirmative, but what the particular force of three negatives may be, I will not venture to conjecture.

11. *Section* 88.—I am glad to see this section restored in its original form as approved by the Behar Rent Committee.

12. *Chapter XIV. Distraint.*—Though I have for many years advocated the abolition of distraint, I see no objection to retaining it in the very modified form here described. If no settled ryot's crops are liable to distraint in the first instance, and if distraint is virtually another name for attachment before judgment, I have no fear that zemindars will be able to abuse the process as they have hitherto done. I rejoice to observe that criminal liability for illegal distraint, which in section 87 of my Bill and note thereon I sought so strongly to enforce, has been provided by section 123.

13. On previous occasions I have so fully expressed my views on the rent question that I deem it unnecessary to make any lengthy comments on the present Bill. I am still opposed to the introduction of "tenures," "undertenures," &c., and to burdening the Bill with provisions on "merger." So far as the substantive law is concerned, I consider this Bill to be infinitely superior to the Commission's Bill, but until the revised chapters which refer to procedure are published, I cannot commit myself to any final opinion as to the sufficiency of amendments.

R. M.—Rep. No. 460J—132—19-4-81.

No. 172G, dated the 25th April 1881.

From—P. NOLAN, Esq., Officiating Collector of Shahabad (on leave),
To—The Secretary to the Government of Bengal, Revenue Department.

IN compliance with the request contained in your letter No. 574—235LR, dated March 1881, I have the honour to express my opinion on the revised Rent Bill drawn up by Mr. Reynolds. I have already, in a report to the Commissioner of the Patna Division, stated at some length what I had to say as to the original Bill prepared by the Commissioners, and I therefore confine my comments on this occasion to the changes since introduced.

2. With reference to section 6, I may note that it is necessary to bear in mind the reason for the presumption made by the existing law, that, when a tenant proves that he has held at fixed rates for 20 years, it shall be assumed that he has so held since the permanent settlement, unless evidence be produced to the contrary. At the time of the permanent settlement there existed a large body of ryots entitled to hold for ever at a quit-rent. The Government of the day did not take the precaution, now always adopted before concluding a settlement, of drawing up a list of these tenants, and their descendants have therefore been exposed to the danger of being deprived of their hereditary rights for want of evidence. It was felt that, considering the humble position of these ryots, the frequent destruction of mat houses by fire and of documents by damp, insects, and many accidents incident to the keeping of papers in this country, it would be impossible for them to prove the rate at which they had paid rent for more than 20 years. I may add that many, perhaps a majority, could not even prove so much, and have therefore lost their privileges. Had it not been for the presumption wisely created by the law, all would probably have shared the same fate.

3. It is said that this presumption of law was first introduced by Act X of 1859. It should be added that this was done with the approval of all competent judges, even of one so opposed to the general policy of the Act as Sir Barnes Peacock. But in fact the rule was unnecessary before 1859; for the abuse against which it was aimed did not previously exist. Under the old Regulations a zemindar, whatever his abstract rights, had no practical means of raising the rent of a ryot who, upon plausible ground, pleaded a right to hold at a quit-rent. There were no courts available for the purpose without disproportionate expense. And the Judge would probably have found in favour of a ryot who alleged the right, proved its enjoyment for 20 years, and successfully challenged the zemindar to produce evidence to defeat it. Act X of 1859 created an agency for enhancement, and properly provided a security against its abuse.

4. It is said that the presumption is unfair to the zemindar. Those who purchased their estates at public auction did so knowing that the presumption existed, and regulated their bids accordingly. They cannot now ask that something which they did not buy should be given to them to the detriment of others having at present a legal right. Other zemindars should have kept proper records, and if they suffer they do so through their own carelessness.

5. On the other hand, the abolition of the presumption would certainly be unfair and indeed ruinous to a large number of most respectable tenants. There are thousands of ryots who now possess the great privilege of holding for ever at a quit-rent, on no other title than that they can prove uniform rates for 20 years and that the presumption thus arising cannot be rebutted. To ask them to give similar proof for all the years since 1839, or, in the case of auction sales, since 1793, is simply to confiscate their tenures. I feel strongly on this subject, as such tenures are nowhere so numerous as in Shahabad. The guzashta holdings of the district rest on this title only, and would be lost if the proposed change were to be effected. This would be a public scandal, as it is notorious that the tenures are really of a date anterior to British, perhaps to Mahomedan, rule. Yet the uniformity of rates cannot be proved for more than 20 years.

6. Independent of the injustice and hardship which would ensue, I think that the abolition of these tenures or any serious diminution in their number would be a great economical evil. The comparative prosperity of the north of Shahabad, contrasting with the general poverty of Behar, has often been noticed. I can attribute it only to the prevalence of the guzashta tenures, maintained by the rule as to the presumption of 20 years. It would probably disappear if the zemindars, who are bent upon doing so, could under the proposed law break the guzashta tenures.

7. I may further note that any measure which would practically interfere with guzashta rights would render the Government which passed it permanently unpopular among the most sturdy class in Shahabad, that from which recruits for the native army are largely drawn.

8. I highly approve of the definition of "occupancy ryots" given in section 18 of Mr. Reynolds' Bill. It is the same in substance as that in the draft of the Bill which afterwards became Act X of 1859, upon which the opinion of local officers was taken. The present definition was framed at a late stage of the Bill, and was not subjected to criticism other than that of the Legislative Council, then assembled at Simla. It works very badly in Behar, where the zemindars openly state that they change ryots' lands to prevent the accrual of occupancy rights, and that they would adopt similar means for the same purpose were the term of limitation reduced to three years.

9. Section 19 appears to me excellent. It is of little use to make laws for the protection of tenants, if we permit these to be set aside by private contract. Tenants can obtain such rights as they are in a position to secure by contract without the intervention of the Legislature, and if we wish to give them anything more we must set some limit to the right of free stipulation.

10. In section 21 I object to the words "in the absence of any specific contract to the contrary." Half the gross produce seems to me a fair maximum limit to rent, which should not be exceeded in any case.

11. The changes introduced in the chapter as to the registration of transfer of tenures and holdings seem to me good, but the Bill, even as amended, does not commend itself to my judgment in this matter. For the reason stated in my letter to the Commissioner, I would provide for the registration of transfers of tenures by Government registrars, and leave the transfers of holdings unregistered as at present.

12. The alterations in sections 50 and 53 as to the deposit of rent seem judicious.

13. Clause 2 of section 69 provides that no improvement which is made without the written consent of the landlord shall be a bar to any enhancement which the landlord might otherwise be entitled to make. This appears to me ambiguous. If it is intended to provide that a landlord, who would be entitled to enhancement had no "improvement" been effected, shall not be barred from his right by the fact that the tenant has, under the name of improvement, really diminished the value of the land, it seems unobjectionable in purpose. In that case its meaning might be more clearly expressed. But it might be construed as giving the landlord a right to raise his rents in consequence of real improvements effected without his consent by occupancy ryots. That would be contrary to the present law, an infringement on occupancy ryots' rights, and an obstacle to all future improvements.

14. The definition of zerait lands, given in section 74, seems open to objection. Lands recognized as zerait by established village custom having been declared to be zeraits by clause (*b*) of that section, it seems unnecessary to add that lands occupied as zerait for 12 years shall be zerait. If the occupation rendered them zerait, the clause is superfluous; if it did not do so by the ordinary village custom, the clause is mischievous as confirming encroachments on the ryot's rights. I prefer the definition of zerait given in the original Bill of the Commissioners.

15. It seems to me unnecessary to fix the period for paying rent as is done in section 83. In the absence of written specification such matters are best settled by local custom.

16. Section 84 appears necessary to prevent the exaction of middlemen. Section 85 will probably prove a dead-letter, as the lease-holder will take an authority to collect arrears, not in virtue of his lease, but as agent for the landlord. It seems to me superfluous and vexatious.

17. I highly approve of section 91, which settles a point as to which there has been much difference of opinion among competent authorities If it is enacted, section 88 will obviously be unnecessary in the interest of the ryot It does not seem desirable to make such an enactment for the benefit of landlords who have established a system so thoroughly bad as that of *bhaoli*. There will be the greatest difficulty in carrying it out, as the Collector has no agency at his command, at once extensive and trustworthy enough, to meet the applications likely to be made under the section.

18. Section 90 appears to me altogether bad, as it leaves it in the discretion of the Collector to fix a money-rent for *bhaoli* lands according to the annual value of the landlord's share in the crops for the previous ten years, with a deduction which shall in no case exceed 50 per cent. Such a money-rent would altogether ruin the ryot who paid it. The only real standard for the conversion of *bhaoli* into money-rent is the average value of land let at money-rents in the vicinity, or as near as can be found. Any other must be unfair to the ryot.

19. I think that the attention of Government has of late been drawn too much to the exceptional cases in which *bhaoli* tenures are cultivated on a reasonable principle, at places where there is great risk of failure of crops, or where the zemindars supply water by channels. In the great majority of cases *bhaoli* tenures are an abuse, pure and simple, and no better work could be done for Behar than to suppress them. The land is badly cultivated, because it does not pay a ryot to give much labour where he can get but half its fruits; the crop is let stand until it is over-ripe, pending the adjustment of disputes; and there are demoralizing practices as to its division. If *bhaoli* cultivators are not all lying cheats, they must have a great original stock of honesty and industry, for no system could be conceived more ruinous to these qualities. *Bhaoli* land may often be distinguished by its scanty crop, and still more by the crop remaining after the proper season for the harvest.

Shooters will be able to bear witness to this, as the birds seem almost always to be shot in *bhaoli* rice which remains standing after all around has been duly cut. I think that it is high time that Government should recognize the magnitude of the evil and offer the ryots the means of converting their tenures to a form which will leave to them the prospect of improvement. In no case, I think, should a landlord be allowed to take more than half the crop, and all *bhaoli* ryots having rights of occupancy should be allowed to

convert their rents to money at the prevailing rate of the nearest places where such rents are known.

20. It will be admitted that the present law is open to abuse in the matter of distraint to any serious extent, only if the abuser is willing to commit some offence punishable under the Penal Code, and to risk the consequences. In Bengal there are consequently no complaints of abuse. In Behar there has been much abuse, owing to the well-grounded belief of the zemindars and their agents that the provisions of the penal law would not be enforced against them; that the entering on property in the possession of another with intent to annoy and injure the possessor, would not, in their case, be treated as criminal trespass; the taking of what they had no right to with the intention of causing wrongful loss as theft. They reckoned with success on impunity for certain forms of crime, and therefore ventured to abuse the right of distraint. The time when such a belief prevailed is rapidly passing away. While it existed, all civil laws for the protection of the ryot were useless. When it has disappeared as completely in Behar as in Nuddea or Pubna, there will be no abuse of the present law of distraint. I would therefore continue that law, which works well in all the Lieutenant-Governor's jurisdiction except one division, and can be made to work well there by the continuance of the attention now properly bestowed upon criminal justice.

21. The proposed law would introduce evils far more subtle, which would rapidly spread all over Bengal, Behar, and Orissa, and which would tend rather to increase than to diminish with time. It is properly described by Mr. Reynolds as virtually a procedure which will have the effect of a summary *ex parte* trial. Now, if there is a power which in this country is sure to be abused and converted into an engine of oppression, it is that of obtaining decrees on an *ex parte* trial. Nowhere is it so necessary to observe, before granting an order, the old Roman precept, to hear the other side. No where is the refusal to do so in the case of a rich suitor against a poor defendant so manifest a breach of the elementary principles of justice.

22. I can understand perfectly how the proposed system would be worked. The great zemindari abuse of these provinces, is the manufacture of imaginary rent-rolls showing rent due from ryots in excess of that which they agreed to pay or were bound to pay, and often, to give the record greater weight, even realizations in excess of those obtained. These rent-rolls are sometimes used to cheat third parties who buy land or take it on lease, believing them authentic, more often as evidence against the ryots themselves. Under the proposed law facilities for the latter purpose would be added to those which, through the carelessness of the ryots in preserving or obtaining receipts, and the hurried procedure of our courts, already exist. Disputes as to the rate of rent really due exist at this moment every where, and I believe on the majority of estates. The zemindars would at once proceed to distrain for the rates they claim on their fictitious rent-rolls, and obtain *ex parte* decrees. It is true that these decisions might subsequently be set aside, but as has often been said of the procedure under the discredited regulations generally known as *huftum* and *punchum*, the case would begin with a knock-down blow to the tenant. A court would have declared the disputed rent due, and realized it by attachment. Instead of remaining as now, on the defensive, the ryot would have to come forward to sue for damages. In most cases this consideration would decide the matter. The fraudulent demand would be paid as the lesser of two evils.

23. The safe-guard provided by section 102 would be no real security to the ryot. The zemindar would allege that the demand for which he sought the right to distrain was not in excess of that of the previous year. In fact, the fraud so generally practised all over these provinces consists in misrepresenting the actual transactions of previous years.

24. If the proposed procedure is approved, I earnestly suggest that a clause be introduced providing for the release of the distrained property on the presentation of a written statement by the ryot denying his liability for the rent claimed. It would seem altogether unjust to levy an alleged debt from a man denying that he owes the money claimed without giving him a hearing, particularly when the claim is of a class which in this country is so frequently made fraudulently.

25. Another security would be to enact that distraint should be exercised only in respect to rent the amount of which was certified by a written kabulyat. Vague and uncertain demands should not, it will be allowed, be realized by an *ex parte* procedure.

26. I do not see why the tenant should be obliged to become plaintiff, instead of waiting to be sued, as provided by section 113. After the money has been realized, the tenant might have the option to lodge a statement in court denying his liability, in which case the landlord should be bound to institute a regular suit for the arrears within one month.

27. With regard to section 114, I may suggest that the sale should be stayed if the tenant deposits security for the payment of the rent, should a decree for the same be granted by any competent court.

28. I must repeat my very strong objection, founded on experience of rent law litigation, to the whole of the proposed procedure, which strikes me as the very worst of all the proposals made recently for giving landlords what they call summary decrees The rent claims which come before the courts are so frequently fraudulent that no presumption can be drawn of the legality of any demand simply because it is made. Until the defendant has been heard, every case must be considered as doubtful. In such trials it seems most

unfair to begin by granting the plaintiff a decree with costs, leaving the defendant to the remedy of a regular suit in which he would have to prove that he did not owe the money demanded, thus having to bear the *onus probandi.* It is almost as if a criminal trial were to begin with the execution.

29. In conclusion, I may refer to my letter No. 1662, dated 8th November 1880, to the address of the Commissioner of Patna, as containing my remarks on the original Bill.

R. M.—Reg. No. 916J—132—30-4-81.

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No. 125, dated Dacca, the 19th April 1881.

From—C. C. Stevens, Esq., Collector of Dacca,

To—The Secretary to the Government of Bengal, Revenue Department.

In reply to your No. 574—235LR., dated 1st March, to my address, I have the honour to forward a few notes on Mr. Reynolds' draft Rent Bill.

Notes on the Draft Rent Bill and the Memorandum by Mr. Reynolds.

1. The definition of "proprietor" includes a trustee; and so also do the definitions of "tenureholder" and "undertenure holder." Is it desirable to insert an illustration?

2 The definition of "ryot" does not include the holder of grass lands, *i.e.*, lands on which the grass is allowed to grow to afford materials for thatching.

3 In the definitions of "lease" and 'kabuliyat" would not "declaring" be a better word than "continuing"? The document does not seem to have any effect in "continuing" the validity of the holding, which would be valid without it, but it "declares" its existence.

Chapter I, section 6.—The changes introduced into the Bill appear to me very unjust to the tenant; and the arguments by which they are supported seem to be self-contradictory. Because "receipts have been much more regularly given, and much more carefully preserved during the last 20 years than during the 20 years which preceded them," it it proposed that the tenant shall prove his uniform holding through both these periods! and this he must do in addition to proving the uniformity of his holding during the future period up to the date when he comes into court. It is hoped that "this great question" of the rent law will be settled "upon a sound and permanent basis." The effect of permanency will be to increase the tenant's difficulties, and in the year 1981 he will have to prove his holding for 142 years before any presumption can arise regarding the other 46.

I have grave doubts regarding the alleged facility with which a ryot can obtain the benefits of the present law. It is not, I believe, so easy as some people think to prove holding on uniform conditions for 20 years. Fires, storms, and damp, not to speak of the never-ceasing destructive energies of insects, all operate against the tenant's documentary proofs, and I think it is just that he should have it in his power to supplement them by oral testimony. It is not easy always, or in fact possible, for him to have this resource even under the present law; under the proposed law, it would be absolutely taken out of his hands.

But when the ryot has proved his uniform holding for 20 years, he establishes not an absolute title but a presumption which can be rebutted by proof of a single variation. Surely in these days of careful preservation of documents by ryots, it is not very unreasonable to expect the landlord with his better house and more systematic records to preserve proof enough for his purpose. There is no hardship to the landlord in this, but there is hardship to the tenant in taking from him a privilege which he has enjoyed for the last 22 years.

It seems to me that the proposals in favour of auction-purchasers are still more unjust. A, a zemindar, does not pay his revenue; his estate is sold by auction and bought by B: A will give B no papers or accounts, and B is therefore at a disadvantage: how is he to obtain relief? It would seem natural (if practicable) that the remedy would be to force A to make over papers or accounts; but this is not the remedy proposed; C, a tenant, who is in no way responsible for the default or the debt of A, but has merely the misfortune to be on the estate, is told that he is the person to suffer; he is the Peter who is to be robbed to pay Paul. Certainly he avoids the difficulty if he has been fortunate enough to have been embroiled in disputes with A, and to have got the better of him, but otherwise it is he who must pay for A's obstructiveness.

It must be admitted of course that auction-purchasers do labour under a grievance in this matter, and it is highly desirable to find a remedy if possible. But after all a man is not compelled to put himself into this position; he need not be an auction-purchaser against his will; and if he does become one he is aware of the risk he runs. It is possible that compensation for the grievance is to be found in the fact that the purchaser pays a lower price; if so, the State, which is at fault as not able to find a just remedy, and especially the defaulter, who is chiefly to blame, suffer. This is not unfair, but it is unfair that the State and the defaulter should seek relief from the innocent tenant. In order to see how far the State suffers, I have enquired into the results of the sales for arrears of revenue in this district during the past year. There were 48 sales; in 41 instances the arrears were recovered; in the remaining 7 cases (the arrears varying from Rs. 1-2-3½ to Rs. 15-5) each estate was bought for one rupee on behalf of Government. Four of these petty estates the proprietor intentionally allowed to go to sale through loss by diluvion, and the remaining three were sold because they were "adamnishan;" but of course one district is but a small area from which to collect facts; I have therefore examined the figures of the last published Land Revenue report of the Board. Appendix No. IX shows us that in the year 1879-80, 2,947 estates were sold on account of arrears amounting to Rs. 70,774 for Rs. 9,89,276, or nearly 14 times the amount

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of the debts. Of these estates, 2,409 were sold for Rs. 6,41,095 to recover arrears of Rs. 34,482 in the small division of Chittagong alone. I have no means of ascertaining in how many cases the sums bid were insufficient to cover the arrears; but it is obvious that the deficient realization must form but a small part of the Rs. 70,774. When I come to look at the figures for Purneah, I find 12 sales to recover arrears of Rs 129, the estates or shares of estates being sold for Rs. 13,767. I take the case of Purneah because the Collector of that district is quoted with approval as having said that "there is hardly an estate in the whole of Bengal in which the value of the proprietary right has not suffered from the presumption." I think that the adjective "forcible" is hardly strong enough to apply to such a wide statement. My own comparatively limited experience leads me to doubt whether claims founded on the presumption are so numerous as they are alleged to be. But after all, what does this prove? simply that estates subject to rights of undertenants would be more valuable if those rights were swept away. This is true enough, but what we really want to know is whether the 20 years' presumption has in fact enabled ryots who had not really held from the time of the Permanent Settlement to take an unjust advantage of their landlords. Information on this point would be of some value.

In reference to this matter I may mention that the East Bengal Landholders' Association admit that it is now too late to raise any objections to the presumption, though they object to the explanation, which they treat as an extension, while it is merely a reassertion, of the existing law.

I am strongly of opinion that the law should be left as it stands with the addition of the first exception.

I concur in the reply which Mr. Reynolds gives to Baboo Joy Kissen Mukherjya regarding this exception, and in introducing the explanation corresponding with that which is appended to section 17.

Section 8 —The changes made in this section appear to be justified.

Section 9 —I see no particular reason for changing my opinion regarding the limit of 30 per cent. Even the Commissioner of Orissa, who is quoted in favour of a lower limit, admits by implication the existence of exceptional instances in which 30 per cent. would not be too high. It must be remembered that we are not fixing an average or uniform rate, but a limit or maximum, which must include "exceptional cases." I adhere therefore to my opinion, but do not consider the point to be of much importance, as I think the law would but seldom be used.

Section 11.—I do not see that the arguments against the limitation laid down in the Bill have any special force. No doubt if we could fix pergunnah rates, we could do without the provision that rents could not be more than doubled at each enhancement. But even then cases of hardship might arise. Under existing circumstances I feel no doubt that the limitation is needed. Recently in the Beerbhoom district I met with cases which would serve as examples. For instance one small village which I visited was established on lands cleared by Sonthals; I do not know exactly when it was cleared, but the village lands were settled with the manjhi for Rs. 76. In the year 1873, the zemindar gave the village in putni, and the putnidar made a fresh settlement with the manjhi for Rs. 205 per annum. In 1879 the putni changed owners, and the result was a fresh settlement for Rs. 410, and I was informed that the present landlord was trying to obtain Rs. 500. All this time nothing whatever was done by the landlord to improve the estate, and the ryots depend now, as they did when they paid one-sixth of their present rent, on the rain, as it falls, for their crops.

I approve the alterations which have been made in the Bill.

Chapter III, Section 18 *et seq.*—It appears certain that (as Mr. Reynolds says) "by the law and custom of their provinces, the khoodkasht ryot is entitled to hold his lands so long as he pays the rent legally demandable for the same:" the difficulty is to define the term "khoodkasht ryot." I think there is no doubt that the rule of 12 years' occupancy is not adequate; it gives rights of occupancy to ryots who would not in former times have been termed khoodkasht ryots, and on the other hand it does not of itself confer such rights on many who would have been called by that name. It is now therefore proposed to substitute for the test of time that of distance, and to lay down that a "settled ryot" shall be one who lives in the village or estate in which he holds land, or within two miles of the lands which he holds.

Baboo Parbutty Charan Roy, who has given me a few notes, objects to this definition on the ground that "many unsettled ryots, who under the present law enjoy occupancy rights, according to the 12 years' rule, will be deprived of those rights by the provisions of this section. Nothing can be said against the proposal not to confer occupancy rights on unsettled ryots in future, but it would be unjust and unfair to take away from such unsettled ryots any rights which they already enjoy." Again, he thinks "it would not be fair to extend occupancy rights to ryots of newly formed churs of the Ganges or the Brahmaputra. The character of the soil of these churs changes materially after each annual inundation. Within ten years a chur, in either of these rivers, may form, become cultivable and habitable, and again disappear. It would be hard for both landlords and tenants if the same rules regarding rents applied to such chur lands as apply to old lands."

With reference to the latter objection, I do not think that there is sufficient ground for excepting such lands as are spoken of from the general law regarding the creation of rights of occupancy, but perhaps there is ground for not making enhancements liable to the ordinary limitations. But I think the other is a serious objection, and one which should

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be guarded against. I cannot say that I like the two miles' rule, which I suspect will lead to a good deal of cheating and litigation. When we once pass out of the village itself, I think the time rule is better, and I would give the right of occupancy after three years.

I do not think it possible to prohibit sub-letting or at least to enforce such a prohibition; and I think it equally impracticable to limit the rent payable by all under-ryots. Such a limitation would certainly be evaded if the demand for land were great, and possibly our care for the interests of the actual cultivator might in the end only injure him. The fact is, as it seems to me, that the demand for land must ultimately regulate the price paid for its use by sub-tenants, and this demand for land depends in no small measure on social considerations outside the Rent Laws. I am in favour, however, of the provision for allowing distraint by the landlord of crops on lands sub-let without his consent.

I still retain my opinion that occupancy holdings should be freely transferable by sale and by mortgage. I believe that this provision would more accurately represent the existing state of things than any other; at the same time I cannot claim to have had very wide experience, and facts may in some localities be different. Perhaps, if it were thought desirable, it might be laid down that a transfer must be made with the landlord's consent, such consent to be withheld only on grounds to be alleged in writing and capable of being contested by the transferrer or transferree. I am not very sure, however, that this would work well. I do not think that the zemindar will gain much by the right of pre-emption, because it will not be difficult to have fictitious sales made, which might be made extremely troublesome to the zemindar, who would find it very hard to be sure that he knew the true price. At the same time I am not quite sure that the fear of injury to the landlord by free transfer is not somewhat overrated: the same difficulty exists to some extent now in the case of putnis and other permanent tenures, which can be freely sold without the landlord's consent.

I do not consider that the exemption of a holding from sale in execution of a decree upon a mortgage bond is likely to be effectual. I think it would be evaded, and holdings would be nominally sold instead of mortgaged, and the ryot would be at the mercy of the money-lender. It is desirable indeed that a ryot shall not mortgage his holding, but to prevent him by law from doing so only weakens him instead of doing him good. With regard to section 20, clause (*c*), Baboo Parbuty Charan Roy says that the provision "requiring the consent of the landlord to the division of a ryot's holding among his legal heirs, is highly objectionable. All the advantages intended to be conferred on the ryot in the other parts of the Bill will be neutralized by this restriction, which will place the ryot entirely at the mercy of his landlord. By compelling the heirs of a ryot to live in a joint family, simply because the zemindar will not give his consent to a division of the holding, this new law will aid largely the exactions of the zemindar and contribute to the further extension of that joint family system, the evils of which are so universally admitted. No consent of the landlord is now required to make valid the division of a ryot's holding among his heirs; why should it be considered necessary in future? The question was never, so far as I know, pressed by the zemindar. Whatever restriction be put on the transference of an occupancy holding by sale or gift or to the devise of it by will, none should be imposed on it when that right is divided among the heirs of a ryot according to the law of inheritance." The value of these remarks depends entirely on their accuracy in fact, and certainly the writer has had abundance of opportunity of obtaining information; I therefore quote his remarks as worthy of attention.

Section 21.—I approve this section and would allow it to interfere with existing rates.

Section 22, *Explanation* I.—I presume that a trustee might be held to be a "landlord."

Section 23.—I concur in thinking it impossible in practice to base rent on the net produce, though if possible it would be just and proper.

Section 25.—I approve the alterations which have now been made in this section.

Chapter IV.—I approve the provisions of this chapter as a whole, but doubt the efficiency in practice of section 30, which will, I believe, be inoperative in every case in which it may suit the parties that it shall be so.

Chapter V.—In my report from Burdwan I generally approved this chapter, but I do not object to the changes which have been made in it. I am not free from difficulty, however, regarding section 33. What is meant by market value "of the land"? Mr. Reynolds tells us that it is "the price which the land will fetch when sold;" but this explanation seems to me to leave the difficulty just where it was. It appears to have attracted the notice of some of the Commissioners (see pages 235 and 236 of the report, volume II); but it was then considered that the words might stand since the same difficulty existed already in the Land Acquisition Act, but had been practically surmounted. It does not seem to me that this consideration disposes of the matter. Under the Acquisition Act, the "market value of the land" is not the market value of this man's rights or that man's rights, but is the aggregate value of all the rights. But in the sale of an ordinary village site, what would practically be sold is not the aggregate of several interests of different degrees, but the right and interest of an individual, and it is not easy to see how the price would serve as a guide for the adjustment of rent. Another point worth considering is that, for the purpose of the Acquisition Act, the "market value", is generally founded on the rental, which is known, while in the present instance the existence of a market value is assumed and the rental is to be calculated on it.

If we take the market value to be the value of the landlord's rights, I think that 5 per cent. is too low. Mr. Reynolds does not seem to have taken into consideration the facts that the zemindar has to pay road cess and zemindari dâk cess and expense of collection, that he has also to run the risk (not a very great one perhaps) of not being able

to collect his rents at all, and further that we are laying down not an average, but a maximum. I would change the 5 per cent. to 6 or even 7. But I believe that practically this provision of the proposed law would be little used.

With reference to section 31, Baboo Parbutty Charan Roy says that "a ryot sometimes keeps a shop in his house. He sells a few things which are not the productions of his holding. He will, by this section, be prevented from selling such things without the consent of his landlord. This seems to me to be objectionable, inasmuch as it is contrary to the present custom." If this custom is universal, the Bill might be altered accordingly; if not, the custom might be saved wherein it prevails.

Chapter VI.—As amended does not appear to call for remarks.

Chapter VII. Registration.—The suggestions which I made from Burdwan have been adopted, and I concur in the other changes which have been made.

Section 47 *and Section* 48. *Rent.*—Is it necessary to say anything about cesses? I have not quite so strong an opinion as I once had on the subject of collections of rents in twelve instalments. I have been told by more than one ryot that the arrangement is convenient when the zemindar does not press too hard; that the money for small instalments is more easily accumulated, and its expenditure is less felt than large instalments are. Unfortunately, however, enormous powers are placed by this system in the hands of the zemindar, and I think it better not to sanction it by law. I have had some doubt whether the provision that interest shall be decreed in every case ought not to be softened a little to meet cases of special hardship; but perhaps such cases would not be very common, and it would certainly be hard to deprive the zemindar of the interest. The section, as it now stands, represents very nearly the existing law, and upon the whole I would retain it without alteration.

Section 49.—Here again should cesses be mentioned?

I suppose clause (*d*) refers to receipts only: if so, it ought to follow clause (*a*) immediately. With reference to clause (*b*) I think some time should be fixed within which the statement of account must be given. The landlord cannot be expected to give it immediately on demand. Would three months be too long? I approve the changes which have been made in this portion.

Sections 50-53. *Deposits.*—I have read these sections carefully and see no objection to them.

Section 54 *and Section* 55. *Apportionment.*—I see no objection to these.

Section 56.—This section also seems to be proper.

Chapter IX. Coparceners.—A good deal of what may frankly be termed nonsense has been written against this chapter by those who represent the zemindars' interests. They seem to assume that it is the desire of the Government to grasp at the management of all landed estates. "This chapter" (says the East Bengal Landholders' Association) "will be an instrument, and a very dangerous one withal, to harass and virtually to ruin the majority of landlords. This will be the easiest method of dispossessing them from their lands and vesting the management of all private landed proprietors in the State. It will virtually make them idle annuitants, &c." I do not know on what grounds it is supposed that Government wishes to burden itself with the management of all the land; its revenue would not be raised or made more secure by such a measure, and as the existing agency is worked, at least up to its full capacity for work, a new and necessarily highly paid agency would be absolutely necessary. But the Bill itself affords no basis for such apprehension. It is intended that interference shall be exercised only in cases in which inconvenience to the public, or injury to private rights, is shown to the satisfaction of both Collector and Judge to be likely to occur. The first interference only extends so far as to insist on the appointment by the parties themselves of a common manager, and it is only in case of failure to do this that the Government officers may appoint such a person. I think it is much better that disputing shareholders should be "idle annuitants" than that they should be in a position to disturb the peace of perhaps a considerable tract of country: no one has a "just and inherent right" to cause inconvenience to the public or injury to private rights.

Section 59.—The powers of a manager would include appointment of establishment. To guard against possible abuses, his appointment should be subject to the approval of the Judge. It might perhaps be well to give Government the power of framing rules for managers.

Section 60.—I think the word "jointly" might be omitted from this section, for if the coparceners agreed to a division or settled their disputes otherwise, I do not see why the Judge should continue to insist on joint management.

Section 61.—The exceptions contained in this section appear reasonable, and cover all the cases, so far as I can see, in which separate collections may justly be allowed.

Section 62.—Both this section and the last apply to coparceners who are entitled to receive rent from the same tenant, while the earlier sections include, or ought to include, all coparceners, those who collect, or say they collect, from different tenants, as well as those who claim to collect a portion of each tenant's rent. In cases in which coparceners have divided their ryots, I see no objection to their measuring or enhancing. In other cases I am clear that a single coparcener ought not to be allowed to enhance, but I am not so clear that he ought not to be allowed to measure, at any rate with the consent of the tenant. Perhaps measurements might be allowed at the instance of one or more coparceners representing a certain interest, say four annas. This would be a concession to the zemindars, and would do no great harm, so far as I can see.

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Chapter X. Section 63.—The provisions of this section seem to me to be applicable to all landlords whose interest is of a permanent nature. The East Bengal Landholders point this out so far as concerns clause 3 and the concluding clause which confer authority, but not as regards the clauses (1) and (2) which impose obligations.

Section 67.—I approve the alterations made in this section.

Section 69.—The alterations which have been made in this section are reasonable and proper in my opinion.

Section 71 *and Section* 72.—These two sections are not open to any serious objection.

Chapter XI—I have been so long out of Behar that I do not think it necessary for me to make suggestions on this chapter, while far more valuable advice is available, and I am somewhat pressed for time.

Chapter XII.—I approve the small alteration which has been made in this chapter.

Chapter XIII.—Calls for no remarks.

Chapter XIV. Distraint.—I have carefully considered the new proposal with regard to distraint. There is no doubt that the repeal of the existing law on that subject is very distasteful to the landlords, not because it was practically useful to them directly, but because under colour of it resort could be had to irregular practices. I look upon the provisions now suggested as an improvement in the existing law, for the reasons that any benefit to be obtained by the landlord must be obtained directly through the law. I am not sure that the landlords, however, will use these provisions very much. Since I have been at Dacca I have had conversations on this subject with some of the ablest advocates of the zemindar's interests, and I have found a general agreement that the modified authority to distrain would not be of much service. One proposal suggested to me as a simple method of enabling the landlords to collect their rents speedily would be to insist on a ryot who is sued depositing the amount of the claim before he is permitted to make a defence. I think that this is open to much objection, for the more unreasonable a landlord's claim the greater would be the immediate pressure on the ryot. Another proposal is to sell ryots' holdings summarily by a process analogous to that by which putnis are brought to sale; this I have carefully considered, after consulting many persons of different classes. I see no objection to allowing the sale of undertenures in this manner, because I think the undertenants are generally able to take care of their own interests; but with every wish to afford facilities to landlords in the recovery of rents, I cannot approve the suggestion to sell summarily ryots' holdings. Perhaps as a rule this plan might work smoothly, but in any case in which a landlord might desire to free himself from an obnoxious tenant, he could do so with the greatest ease; he could with the help of a little bribery so arrange that the ryot should hear nothing until his holding had been sold, for the ryot then to be able to recover his position would be almost impossible. Until zemindars and their servants are more scrupulous than too many of them now are, I cannot advise so great a power being placed in their hands.

I think that the best practical plan of legitimately helping the landlords would be to give them the modified power of distraint suggested in Mr Reynolds' note; to simplify the procedure in ordinary rent suits, so that they might be tried as small causes are; to reduce the expense caused by the process fees, which in petty cases bear an enormously high proportion to the amount of the suits; and to provide an adequate machinery for the rapid disposal of all the work which is not of a complicated nature.

I am not disposed, as at present advised, to be much afraid that the ryot will not have protection enough in the proposed distraint law against unfounded claims. Nor do I think that precautions need be taken against collusive distraints, except that a third party might be permitted to appear before the court, claiming the right to receive the rent and petition to have the distraint set aside or the distraint treated as if it had been made by him. Of course this petition could be made only up to the time fixed for the sale; and the petitioner might be made to deposit the amount of the distraining landlord's claim to meet any loss sustained by the postponement of the sale.

C. C. Stevens.

W. H—Reg. No. 822J—132—3-5-81.

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No. 100, dated Chuprah, the 21st April 1881.

From—A. P. MacDonnell, Esq., Officiating Collector of Sarun,

To—The Secretary to the Government of Bengal, Revenue Department.

With reference to your letter No 574—235LR of 1st March last, calling on me to report on the provisions of Mr. Reynolds' draft Rent Bill, I have the honor to say that I have already embodied all I have to say on the rent question in Behar in a report which I submitted to the Commissioner of Patna last December. In reply to a request from Mr. Secretary Mackenzie for my opinion on Mr. Reynolds' Bankipore notes, I sent him a copy of that report, and it is doubtless to be found in the Bengal Office. May I request that you will consult it for the opinions I entertain on rent law reform in Behar. I have nothing to add to or to modify in the views expressed in it. Those views are substantially in harmony with Mr. Reynolds' own. The only material points of difference are that I would prefer to make occupancy rights of resident ryots conterminous with the mouzah they live in, instead of adopting a two-mile radius which may fall short of the mouzah boundaries, besides being foreign to the custom of the province; secondly, that I would make the right of commuting "bhaoli" into money rents as much the right of the landlord as of the tenant; thirdly, that I would not insist in levying, on applications for distraint, so high a stamp duty as would be leviable on plaints, and that I would allow the landlord to include ten ryots in one application; and lastly, that I would impose a restriction, in the landlord's interest, on the unlimited right of sale of their holdings which the Bill would confer on occupancy tenants.

R M.—Reg. No. 970J—132—3-5-81.

No. 142, dated Burrisal, the 25th April 1881.

From—J. C. VEASEY, Esq., Offg. Collector of Backergunge,

To—The Secretary to the Government of Bengal, Revenue Department.

I HAVE the honour to reply to your Revenue circular No. 574—235LR of the 1st ultimo, forwarding a memorandum and revised Rent Bill. The references are to the sections in that Bill—draft Bill II.

2. *Section* 11 *a.*—I have read attentively the arguments in favour of a restriction on enhancement, and I am still of opinion that a hard-and-fast rule, though it may relieve some honest holders from an undoubted hardship, will in many instances act hardly upon the zemindars. It is no doubt the case that if fraud is proved the courts will annul the tenure; but, whilst fraud is of every-day occurrence, whilst its existence indeed may almost be presumed in many cases, there is nothing it is so hard to prove or to get a remedy for. "Caveat emptor" does not apply, for though the auction-purchaser may be able to form an approximate idea of the value of an estate as a whole, it is hard to see how he is to know what tenure is, and what is not, held at a fair rental

Nor is the auction-purchaser the only person to whom this rule is likely to give ground for complaint. Take the case of a large bheel, leased out partly as a fishery, partly merely to establish a title, and silting up, as bheels invariably do silt up, so as to become more valuable than char land: why is the jotedar or hauladar's rent only to be doubled when, had the holding deteriorated, he would have thrown it up.

The Commissioners, using as an *argumentum ad hominem* the case of a European compelled to keep a house at a quadruple rent, say he would regard it as a legalized tyranny. No doubt he would, but he would none the less have to pay the enhanced rent, or leave the house: the law would not protect him in the case of a necessary, though it offers the ægis of its protection to a tenureholder, who can generally get land elsewhere.

3. *Section* 18, *Explanation I.*—I would omit the words "or estate" as putting a ryot in a large estate in a better position than his fellow in a small one, though the one may live within a distance of just over two miles from his jote, and the other may be four or six miles away.

Mr. Reilly, the Superintendent of the Backergunge zemindaries of Nawab Ashanulla, is opposed to any extension of rights of occupancy, on the ground that now-a-days tenants-at-will are the only class who pay up their rents with anything like punctuality, and that ryots with fixity of rent and fixity of tenure will only pay at their own time and on compulsion. The remedy for this, however, is with the moonsifs, whose proceedings might be subject to summary revision in cases where they refuse to award the landlord damages under section 96.

4. *Section* 19.—This section is certain to be hotly opposed by the zemindars' side, but it is one which should stand. It is quite possible to overrate the helplessness and ignorance of the Bengali ryot, but it is hardly possible to overrate his unscrupulousness. It is better, therefore, that he should be by statute unable to divest himself of a right inherent in his status, than that he should be allowed to do so, and then, as a necessary consequence, be encouraged to repudiate the action.

5. *Section* 20*d.*—Some provision seems to be necessary for the recovery of rent accruing during the time a suit is pending.

6. *Section* 38.—There can be no doubt some such check is wanted, at the same time it leaves a landlord in embarrassed circumstances pretty much at the mercy of a wealthy adversary who may be willing to pay a fancy price for what is to him a convenient base of operations. And it would be easy by a tacit understanding to name a price much in excess of the amount that was actually to pass. I am afraid, therefore, that this section is likely to be evaded, and the only remedy I can see is that, on the landlord's depositing the costs, he should be entitled to have a valuation.

7. *Section* 47*b.*—As, in this district, the whole rent is generally payable either at the end of the year or during the last quarter, the system of quarterly instalments may prove inconvenient. The Bill, however, gives the Collector the power to fix the portion of each instalment, and the difficulty may thus be minimized. Still it is worth considering if the nirikhbundi should not be pergunnahwari or thanawari instead of being general for the whole district. A little discretion to local officers in this respect would do no harm, and could be so used as to prevent the new law being thought unfair or irksome.

8. *Section* 49*b.*—"Upon the expiry of" is a vague expression; it would be better to have a fixed period, and I should suggest substituting "within one month after." The section might well enact that these receipts and statements should be signed and sealed to prevent their being repudiated when occasion required.

9. *Section* 51*b.*—The eight annas is to represent talabana, and may more often than not be short of the costs of service, as the notice is to be served upon every co-parcener. If it is unfair that the landlord should pay, it is equally unfair that Government should pay; and as I quite concur in the opinion that the practice of depositing rent is not to be encouraged, I would require the ryot, in addition to the talabana, to pay, say an anna in the rupee, as a court-fee. I have no objection to the retention of the solemn affirmation though, I admit,

I attach not the slightest value to it. On the whole, it seems to me that these sections (50-53) may well be omitted and that their place should be taken by rules to be framed by the Board of Revenue.

10. *Section* 66.—I object to the last clause of this, as recognizing a practice which has been the cause of endless disputes and affrays, and I would substitute for it a provision to exactly the contrary effect. So far from allowing claimants to harass the actual proprietors by creating pseudo under-tenants, I would visit the action with penal consequences ; and I write advisedly since it is only recently that in this district we were on the verge of serious disturbances consequent on attempts of this nature to bolster up a doubtful title. The matter is one which requires to be looked at from the point of view of a policeman and not of a lawyer.

11. *Section* 68*a*.—I do not think any hardship would be occasioned by enacting that in all suits the standard bigha should be referred to, and the local measure converted into it. The present, too, affords a good opportunity for substituting the 30-foot chain for the old null jarip under which so many iniquities have been perpetrated.

12. *Section* 71-4.—How is the case of a tenant who abandons his holding, but does not leave the neighbourhood, to be provided for ? It would seem that he ought to continue liable unless he has given formal notice of relinquishment.

13. *Section* 103.—I disapprove of the extension of the right of distraint to crops deposited within a homestead or store-house. The right is likely to be abused under such circumstances, and it is obviously impossible to distinguish between the produce of land held under different landlords. It is not plain if grain thrashed out is to be distrained.

14. *Section* 106. —I see no reason for any restriction on the number.

R. M.—Reg. No 1015J—132—4-5-81.

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Dated Durbhunga, the 15th April 188[illegible].

From—JOHN BOXWELL, Esq., Collector of Durbhanga,

To—The Secretary to the Government of Bengal, Revenue, Department.

I HAVE the honor to submit notes on the Rent Bill called for in your No. 574-235LR, of the 1st ultimo.

2. The substitutions I think might be made I have put in the margin of the printed draft; I give the reasons here.

3. The interest and difficulties of a Land Bill centre round five points,—Fixity of Tenure, Fair Rent, Free Sale, Recovery of Rent, and Growth of Peasant Proprietors. All five are dealt with in the draft.

4. Ryots holding at rates fixed for ever are virtually peasant proprietors. They are cultivators, and as their rents are usually very low, they are hardly at a disadvantage compared with actual maliks of little estates.

5. Section 16 concerns them. Sections 6 (*b*) and 16 may be treated together. What I have to say is more directly applicable to 16, the more important of the two I think.

6. I do not understand the reasoning which leads to the change in the law of presumption. I think the best way to argue is to put the case as I see it.

7. The State recognizes old ryots whose rent has not been changed, as a class of the community deserving protection, and by law it perpetuates their condition of advantage. In this every one must acknowledge very great wisdom. Such ryots are a strong element of stability, as well as examples of comfort and independence.

8. But very few of them can prove rents unchanged since 1793. To make the recognition of the class valuable, it was necessary to admit a rule of presumption, fairly fixed at 20 years. It is not that so much "law," in the sporting sense, was given them; but that when trying to sift out the real old *maurusi* holders, 20 years presumption balanced by leave to rebut, is likely to give a result not far from the truth. The distinction is important. There *is* a fixed number of ryots who are now holding at rents unchanged since 1793. There is as little chance of finding them all precisely, as of determining the sun's distance to a mile. Whatever we do, we are sure to let some old holdings be lost, and admit a few false ones. But our aim is as clear as day-light. It is to ascertain a fact with the least possible error by the method of probability. In dividing the unearned increment we are not trying to ascertain a fact. We are trying to effect a compromise; to induce each party to give up some of what he wants in order to enjoy the rest in security.

9. Natural rents, or rents into which competition entered even imperfectly, would change more than once in 20 years. Therefore unchanged rents for 20 years indicated some special condition of advantage; most likely this very one we are in search of, an old *maurusi* holding. If there is no such holding the zemindar can probably prove it.

10. The ryot, as it were, states a universal, very hard to prove. If he is compelled to prove it, he will most likely fail; and many old holdings will be lost The zemindar states the particular contradictory, of course much easier to prove. The larger the universe the harder it is to prove the universal, and the easier to prove the contradictory particular. The ryot is like an army marching into an enemy's country from his base of operations 1793. The longer his line of communications, the harder it is for him to guard it, and the easier for the assailant to cut it across.

11. As to difficulty of proof and rebutter; up to 1859, zemindars had no special reason for refusing receipts, therefore the ryots got them freely enough: ryots were careless about keeping them, therefore it was hard to furnish the proper number. Zemindars had no special reason for showing change of rent; therefore they neither enhanced on purpose to make a change; nor kept records of change with special care. It was a time of records, scanty, and made without special reference to the question now in debate.

12. After 1859 the zemindars knew that every receipt repeating the one before it was the twentieth part of a strong case against themselves. They would look into their records to see if the rent had been changed; they would try the enhancement clauses to make a change, if they could not find one to nip the budding presumption.

13. The ryot can do nothing to improve his case. A real pedigree cannot be made. It either is or is not. The landlord has two weapons both increasing in efficiency. He has a longer time in which to *show* change; and in a doubtful case he can *make* a change.

14. Comparing the times before and after 1880; henceforward the presumption will be harder to set up in so far as receipts are more cautiously given; it will be easier to set up in so far as receipts are more carefully kept. It will be easier to rebut in so far as more changes have been both recorded and made; it will be harder to rebut in so far as 20 years unchanged receipts are the issue of a struggle decided.

15. Suppose a ryot to have proved an unchanged rent paid every year from 1850 to 1870, what is the probable effect of admitting or refusing the presumption? What we want to do is, not to handicap so as to bring the parties together, but to ascertain a fact within reasonable limits of certainty. The zemindar has much older and better records than the ryot. If from 1793 to 1849 he can show one change, the ryot's case is gone, if not, the receipts from 1850 to 1860 create only ordinary presumption. The receipts

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given by the landlord between 1860 and 1870 are given with full knowledge of the effect. The landlord had a chance of either enhancing or abating. If he did neither, it is probably because he could not; because the holder of an old *jote* stuck to his rights.

If then we admit the presumption, we are merely giving effect to what *is* a very strong presumption.

If we refuse to admit it, we are very likely to break down an old *maurusi* holding.

The important question is, not whether the presumption is easy or difficult to set up or rebut, but whether, under the circumstances, 20 years' unchanged rent *does* or *does not* create a very strong presumption that the holding is old *maurusi*. If it does, then the law ought to give effect to it.

16. The number of old *maurusi* holdings now depending for existence on the presumption, must be small, and decreasing very rapidly. Before long all old *maurusies* ought to be ascertained and registered. Meantime I cannot understand any one sympathizing with a zemindar who wished a ryot to lose his chance by losing his receipts. Indeed I cannot understand the objections to the 20 years rule at all. The receipts for 20 years only prove rents unchanged for 20 years. Why should any one regret that proof of any real fact was forthcoming? Once proved, do 20 years of rent unchanged in a time of watchfulness, stimulated litigation, and hard struggle, create a less strong presumption than 20 years' rent unchanged in the sleepy times before Act X?

17. On the great question of Tenant-Right Section 18 deserves letters of gold. I believe all right thinking men have long been wishing for something like this. I cannot add or suggest anything.

18. Now for enhancement. This is the great centre of difficulty and interest. Two or three propositions show the difficulty—

A landlord must be able to get some of the unearned increment.

The great body of tenants must have rights of occupancy

Unlimited power of enhancement destroys right of occupancy.

Elaborate systems for discovering fair rent always fail. They are costly, slow, and uncertain.

19. In other dealings the market price and open competition are obviously right. The latter works in the best possible way to produce the former.

But we want to save the tenant right from the force of open competition. We want something, not exactly open competition, to work somewhat like competition, to produce Fixity of Tenure with Fair Rent.

20. Judge Longfield, of the Landed Estates Court, in Ireland, thought out a plan which has been much discussed: and which I think admirable, and also capable of improvement.

21. His plan in principle is this: let every tenant be given a parliamentary tenant right—valued at so many years purchase of his rent. If the landlord wishes to enhance let him serve notice; if the tenant accepts, the matter is settled. If not, the landlord evicts the tenant, and pays him the fixed number of years purchase of the rent *at the enhanced rate*.

If the tenant wishes to abate, he serves notice; and if the landlord will not accept, the tenant goes out, receiving the fixed number of years purchase of *the lowered rent proposed by himself*.

22. This plan has almost every element of excellence. The two men who know most about the case settle the dispute between themselves. A good premium is put on moderation. In each case the loss from too high or too low compensation arises out of the losers own estimate of the rent. As Judge Longfield himself puts it, one cuts the apple and the other chooses.

Simultaneous notices to enhance and abate, cannot, as a Dublin newspaper foolishly imagined, lead to a dead-lock: *first*, because it is the obvious interest of each party to let the other act, which tends not to a dead-lock, but to maintenance of the existing state: and *secondly*, because if the tenant goes out it must be *either* voluntarily or involuntarily; it cannot be *both*

23. But Judge Longfield's plan does not seem to me to give quite enough *inertia* to the existing condition. We may here get a useful hint from certain natural laws into which square numbers introduce rapid change. For example, the heights of mountains are practically as the squares of their visual distances. To see a mountain twice as far off, we must have it four time as high: three times as far off, nines times as high.

24. I would therefore propose this rule for enhancement and abatement.

Let the Government fix a period within which rent cannot be changed: and another number of years, to be called the basis, (I would suggest 10 years for the period of unchanged rent, and 7 years for the basis.)

Let the compensation to be given to a tenant, in other words the value of his Tenant Right, be seven times his last year's rent, multiplied by the square of the factor of alteration—

Let C = compensation.
" r = the last year's rent
" b = the number of years fixed as basis.
" f = factor by which (*integer*) the landlord, or (*fractional*) the tenant, wishes to multiply the old rent.

Then let $C = brf^2$.

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25. I wish to explain somewhat at length. The rack-rent is the whole rent the land can pay after satisfying certain prior claims of the tenant, such as price of seed, wages of labour, and a small profit. The whole tenant-right problem seems to me to resolve itself into this—how to make it worth the landlord's while to keep the rent up to a certain distance below rack-rent, and no higher. Then by giving the tenant absolute fixity as long as he pays his rent, we have given him everything he ought to want.

26. The question of Tenant-Right must always come to the alternative "pay your rent or go." By enacting that no tenant can be evicted except for non-payment of rent, all capricious eviction is stopped. Then if the law can insure that the rent demanded as alternative to going out, is fair, the tenant cannot justly complain that he is forced to accept the alternative. By the formula $C=brf^2$ we can weight the landlord to an ounce, by making b larger or smaller.

27. Now I wish to give some illustrations of the way the rule would work. What I want to point out is the great rapidity with which the method of squares causes the compensation to increase or diminish. This I say is exactly what we want, very great *inertia* of a peculiar kind in the old rent. It can easily be raised or lowered a little, if it is very low or very high. To raise it much costs the landlord far more than it is worth; while to lower it much cuts away nearly all the tenant's valuable right. To double the rent quadruples the compensation; to halve the rent quarters the compensation.

28. The rack-rent is always the real standard to which both the landlord and the tenant look back. If a landlord buys out a tenant with Tenant-Right, he buys the right of rack-renting a new tenant for a period at least, and he calculates his bargain. If a tenant accepts compensation and goes out, he either buys a Tenant-Right, or keeps his money and pays a rack-rent He also calculates which pays best, the particular sum of ready money and a rack-rent to pay, or a Tenant-Right. In every case the important ratio is

$$\frac{\text{Compensation.}}{\text{Difference between rack-rent and actual rent.}} \quad \text{or} \quad \frac{C}{R-r}$$

If this is much over 10 we may say the landlord will give way. It means that he would take more than 10 years to recover the compensation; and he can get more than 10 per cent. in the bazar.

ILLUSTRATIONS.

Rack rent=100.
$b. = 7.$
$r. = 25.$

Case I.

$f=\frac{6}{5}$
$brf^2=7\times25\times\frac{36}{25}=252=C.$
$g=100-r=75. \quad \frac{c}{g}=3{\cdot}36.$

I.

The landlord can easily raise the rent from 25 to 30. If the tenant refused, the landlord would recover the compensation in 3·36 years. The tenant would certainly yield as he would still be 70 degrees below R. If he went elsewhere and paid R his compensation would be gone in 3·6 years

II.

$f=\frac{8}{5}.$
$brf^2=7\times25\times\frac{64}{25}=448.$
$\frac{C}{g}=5\ 97.$

II.

The landlord can raise from 25 to 40. He would recover c in about six years. The tenant would yield. He has still a profit of 60. His compensation would be eaten up by 7·4 years of R.

III.

$f=2.$
$brf^2=7\times25\times4=700.$
$\frac{C}{g}=9{\cdot}6.$

III.

Though the rent would still be only half a rack-rent, we are approaching the probable limits of enhancement in the first Rent Period.

IV.

$f=\frac{12}{5}.$
$brf^2=7\times25\times\frac{144}{25}=1008.$
$\frac{C}{g}=13\ 4.$

IV.

If the landlord tries to raise the rent from 25 to 60, the tenant goes out. The landlord takes 13·4 years to recover; while the tenant gets 25·2 years purchase of the difference between what he is asked to pay, and a rack-rent. It would pay him well to take a jote somewhere else at a rack-rent.

V.

$f=3.$
$brf^2=7\times25\times9=1575.$
$\frac{C}{g}=21.$

V.

This case shows the power of the squares. Though the rent asked for is still only three-fourths of a rack-rent, no landlord could go up to it from 25.

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If then a tenant holds land at about a quarter of a rack-rent, the landlord can about double it the first time by the method of squares. He can hardly go higher. He must wait for the next Rent Period.

$R = 100 = r.$
$b = 7.$

Case 1.

$f = \frac{9}{10}.$
$brf^2 = 7 \times 100 \times \frac{81}{100} = 567.$
$g = 100 - 90 = 10$
$\frac{C}{g} = 56\ 7.$

1.

A tenant holding at a rack-rent can easily reduce it by a tenth If the landlord let him go, and paid compensation, he would take 56 7 years to make up the loss

2.

$f = \frac{4}{5}.$
$brf^2 = 7 \times 100 \times \frac{16}{25} = 448.$
$g = 20.$
$\frac{C}{g} = 22\ 4$

2.

The tenant can reduce a rack-rent by a fifth. No landlord would pay 22·4 years' purchase of what he would gain by letting the tenant go and setting at a rack-rent.

3.

$f = \frac{3}{4}.$
$brf^2 = 7 \times 100 \times \frac{9}{16} = 394.$
$g = 25.$
$\frac{C}{g} = 15\ 7$

3

The tenant can get down from a rack-rent to 75. It would not pay the landlord to let him go.

4.

$f = \frac{7}{10}.$
$brf^2 = 7 \times 100 \times \frac{49}{100} = 343.$
$g = 30.$
$\frac{C}{g} = 11{\cdot}4.$

4.

We are coming near the limit of reduction in the first Rent Period from a rack-rent. A tenant will have to wait for a second rent period to get much below 70.

5.

$f = \frac{13}{20}.$
$brf^2 = 7 \times 100 \times \frac{169}{400} = 296.$
$g = 35.$
$\frac{C}{g} = 8\ 4$

5.

If a tenant tried to get down from 100 to 65, his landlord would let him go and recover the compensation in 8 4 years.

6

$f = \frac{1}{2}.$
$brf^2 = 7 \times 100 \times \frac{1}{4} = 175.$
$g = 50.$
$\frac{C}{g} \times 3\ 5.$

6

If a tenant at a rack-rent tried to reduce his rent by one-half the first time, the landlord would let him go, and recover in 3·5 years.

It thus appears that if two tenants are holding exactly similar jotes, one at a rack-rent, and the other at a quarter of a rack-rent, the method of squares enables the landlord to raise the low rent to about half a rack-rent; and enables the rack-rented ryot to reduce to somewhat less than three-quarters of a rack-rent This is in accordance with Indian ideas which are against sudden great changes Let us now go on 10 years, to the next Rent Period.

VI.

$r = 50.$

$f = \frac{6}{5}.$
$brf^2 = 7 \times 50 \times \frac{36}{25} = 504.$
$g = 50.$
$\frac{C}{g} = 10.$

VI.

In case IV it was seen that the landlord could not get up from 25 to 60 He could only reach about 50. But in the next period he can raise from 50 to 60. The squares are here seen acting well. Though the compensation is calculated on double the former rent, it is only half what it was then.

VII.

$r = 60.$

$f = \frac{13}{11}.$
$brf^2 = 7 \times 60 \times \frac{169}{121} = 493.$
$g = 40.$
$\frac{C}{g} = 12.$

VII

In a third rise the landlord could get the rent nearly up to 65 per cent of a rack-rent, where he would stay. As the rack-rent increased with the general improvement, the actual rent would follow it at about this distance

7

$r = 70.$

$f = \frac{13}{14}.$
$brf^2 = 7 \times 70 \times \frac{169}{196} = 422\ 5$
$g = 35.$
$\frac{C}{g} = 12.$

7

In case 5, it was seen that a tenant could not force his rent down from a rack-rent to 65 per cent. of a rack-rent. But having got down to 70 in the first period, he can get down to 65 in the next. His landlord would take 12 years to recover the compensation.

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These cases make it appear that a basis of 7 years, with the Method of Squares, fixes an occupancy rent at something between 60 and 65 per cent. of a rack-rent. It is obvious that the Government could so arrange *b* as to make the occupancy rent whatever seemed right.

29. It is futile to base rent calculations on the gross produce. A rack-rent is the whole surplus, after certain deductions which must be paid first, or the land cannot continue in cultivation. Very poor land pays no rent. An anna an acre is enough to drive out of cultivation land that does not produce an anna over such deductions.

30. Accordingly the rack-rent may vary between 0 in the poorest land and anything short of 100 per cent. on fancy crops. 40 per cent of the gross produce may be said to be a high rack-rent; that is, a rent payable only by very good ordinary crops.

31. A rack-rent is not only the highest rent the landlord can get, but also the highest outturn the landlord can get in any way; because, as he is p obably not so good a cultivator, he would probably make less out of the land than a tenant.

32. It is also the great standard Its money equivalent is constantly changing, generally rising slowly. The whole rent problem is how to keep the mass of the rent somewhere between 50 and 80 per cent. of a rack-rent. This rack-rent is always easy enough to find when we do not want it; that is, when it has to be paid. It is very hard to determine it except by direct experiment, which we wish to avoid. By weighting the landlord with a Tenant-Right against him, and then letting him make his own terms with the tenant, we do what we want, find a rent lower than a rack-rent, fixed with tacit reference to a rack-rent, by the two people who know

33. The plan I advocate would work somewhat in this way. The Government would fix a date to be the beginning of the first period of ten years. It might be enacted either that present rents were to hold for ten years, or that changes might now be made, to last for ten years. Whatever the rent was at the start, it would come in the end to what the Government decided was a fair rent; that is, so much per cent. on a rack-rent.

34. When a landlord found himself in possession of a bit of ryoti jote, he could set it at a rack-rent for ten years. Then the tenant could reduce to about 80 per cent. easily; and in a second fall to about 65 per cent. The landlord can make a fair guess at what he could get for the holding in the open market, and the cultivator can guess what he would have to pay for a similar jote if he gave up this one They can easily enough settle what compensation it would pay to give and take as the set-off to a rack-rent. The method of squares operates in making a great rise or fall extremely costly.

35. The rule making rents fixed for ten year periods very nearly puts an end to the "improvements" difficulty. Ryots seldom make great lasting improvements. The landlord by improving, raises the rack-rent and, therefore, what varies with the rack-rent. The real objection to the rule of proportion, and estimate of extent and cause of increased powers of production, is, that the problem is far too difficult for any one to solve. It is a commonplace, that valuations are never right, and that valuators lose no credit by disagreement. There is no machinery in the country, or in any country, for trying all enhancement suits or a fair proportion of them, well. They would be among the most difficult cases an experienced District Judge could try; and they have to be tried by the score by Munsifs or young Deputy Collectors.

36. If a zemindar makes a bund, or a tank, or a road, and thereby increases the paying power of the adjacent land, he can enhance a little, and is quite well enough paid. No matter what improvements the landlord makes, the essence of Tenant-Right is that the tenant should pay less than a rack-rent, and thus, by owning a valuable property become steadfast and prosperous.

A tenant's improvements are jungle-cutting, manuring, and small irrigation The ten year's rent period insures him full repayment.

37. Is there not something wrong in the wording of the exceptions to sections 6 and 16? How can a presumption operate or exist after the case has been proved? Does not a favourable, just as much as an unfavourable decision, put an end to a presumption? Ought not the words from "unless" to the end to be left out?

38. In section 22, explanation I (*b*) should, I think, be left out. There is no reason why an izaradar should be given landlord's privileges. As a rule he is useless and mischievous. We can all see the use of a real landlord. He collects the land revenue, and is the counterpart to the indispensable ryot. An izaradar has none of the good attributes of a landlord; nor is he a scientific commercial cultivator. He is a rent jobber. He makes his profit either by actually raising rents, or using his power as a lever to force the ryots. It is impossible to abolish izaradars; but if they could not raise rents, they would gradually drop out of existence.

39. On Chapter VI: I do not understand the statement that the "converse case" is not provided for. It seems to me that both cases are all along taken together. "The same person becoming proprietor of estate and owner of tenure," includes both A getting hold of B's interest, and B getting hold of A's. That section 34 seems to look only downwards does not make any difference.

40. On section 47: I do not think the kists well arranged. The 1st of Asarh is, I think, the worst day in the whole year to ask a tenant for rent. On that day a large number must borow it at high interest. I would give up the quarterly symmetry altogether During Baisakh, Jaisht, Asarh, and Sravan, the ryot is empty. He is hard at work

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ploughing and sowing; often borrowing both what he sows and what he eats. And even well-to-do ryots ought to be let alone then; their surplus they can use much better in lending to their poor neighbours, as they often do.

41. Aswin, Kartik, Paush, and Chaitra, seem to me the right kist months, with about 2, 2, 6, 6, annas of the whole rent in this order. The amount of each kist might be left to the Collectors; but the kist months should all be in the full two-thirds of the year; none in the empty third, from Baisakh to Sravan.

42. The remarks in the memorandum on the deposit of rent are so very good, and so complete, that I need not say a word about the text of the bill, which is open to the criticism passed on it.

43. I cannot think why the admirable provisions of sections 82 and 84 are not made universal: why a Bengal zemindar's khamar does not deserve as much protection as a Behar malik's zirat I think we ought to encourage the separation of landlords own, from ryoti jotes. Zemindars ought to have their parks, demesnes, and home farms. If for any reason, good or bad, a zemindar set some of his own land, his heir ought not to be made to suffer. The rule for Bengal damages landlords a good deal, and does the tenants no good.

44. On the difficult question of sub-letting, I see no reason for not aiming straight at the desired object. Directly connected with the land are four important classes; Landlords; Cultivating proprietors; Cultivating tenants; and Labourers. All others are illegitimate landlords. Of illegitimate landlords the worst are izaradars and sub-letting occupancy ryots. Their business, rent jobbing, leads to no useful end. The landlord is meant to get all the rent that is actually paid. It is as cultivator that the occupancy ryot is given his Tenant-Right. There is a perfectly innocent and useful form of sub-letting; where a comfortable ryot lets his own labourer a bigha or two, to work at out of hours. But there is no reason why the ryot should make any profit out of this transaction. He makes his profit out of his cultivation; and his korfa's labour is all that he is meant to get out of the korfa. I would therefore propose that no tenant be able to recover in a court a higher rent than he pays himself for the same land; that he be not able to recover more than one clear year's rent; and that the whole crop on the land, ryot's and korfa's, be liable to distraint for the landlord's rent.

45. No doubt attempts to evade the law would be made, and would often succeed. In a few odd cases the ryot would take a high rent in advance from the korfa. But as a rule a korfa with thrift enough to have his year's rent in hand in advance, would have sense enough to make a better bargain for himself.

46. The three rules given above would tend to discourage objectionable sub-letting from both sides. The ryot would not make a profit, and the korfa would be afraid of losing his crops for the ryot's debt, unless he was very sure of his man.

47. The law of distraint is I think as good as it can be made. Till one can suggest something better there is no use in crying out against distraint.

J. H deL—Reg. No 821J—132—13-5-81.

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No. 6, dated Chinsurah, the 26th April 1881.

From—JOHN BEAMES, Esq., Offg. Commissioner of the Burdwan Division,
To—The Secretary to the Government of Bengal, Revenue Department.

IN reply to your No. 574—235LR, dated 1st March 1881, I have the honor to submit my report on the Draft Rent Bill drawn up by Mr. Reynolds.

2. As, owing to peculiar circumstances, I had no opportunity of expressing my opinion on the Bill of the Rent Commission, I trust I may be allowed to take this opportunity of stating that I doubt very much whether legislation is required at all in this matter at present, so far as Bengal proper is concerned. I have heard this opinion from many persons of judgment and experience, so that I do not stand alone in expressing it.

3. In Eastern Bengal the ryot and tenure-holder have at present a very strong position, and so have those of other parts of Bengal, though perhaps to a lesser extent. The tide of legislation in favour of the ryot, which set in in 1859, has gone on steadily flowing till the present day, and it has now become a question whether any further attempts to improve the ryot's position will not have the effect of injuring the zemindar. The point has, I think, been reached at which the existence of the zemindar has begun to be seriously threatened.

4. From the experience I have had of the very great difficulty which the officers of Government feel in managing wards' and attached estates in the Chittagong and Dacca Divisions, I am convinced that the position of zemindars in those parts is a precarious one. As far as I am able to judge, it will be rendered still more so if the present Bill, moderate as it is, becomes law.

5. After tacitly acquiescing in the assumption and exercise of certain powers by the zemindar for nearly a century, it is rather late in the day to discover that it was never intended that he should have those powers, and that neither the past history of the land question, nor the legislation under British rule, justifies him in exercising them. That in fact his status is, and has all along been understood to be, something very different from what it practically has been.

6. I am not aware that any section of the community in Bengal has suggested or manifested any desire for new legislation on the rent question. If there is really a want for it in Behar, it would perhaps be sufficient if a law were passed giving the inhabitants of that province the relief they desire without disturbing another province where no change is called for.

7. I now proceed to offer some remarks on the various sections of Mr. Reynolds' Draft Bill.

8. *Section* 6.—These sections are those of the Rent Commission Bill. I do not mean to deny the grievances of the auction purchaser. His troubles are notorious all over Bengal. But I do not think this section is the proper place for remedying them. I do not see why a tenure-holder should be placed in a worse position than he was in before, because his zemindar has defaulted and the estate has been sold. It is not his fault that the zemindar has defaulted, and yet the default throws on him the burden of having to prove unchanged rent since the permanent settlement instead of from 1859. The former is an almost impossible, while the latter is comparatively an easy thing to do.

9. Act XI of 1859 requires amendment in several respects, particularly in regard to section 29. That will be the proper place for provisions in favour of the auction purchaser and they should be stringent ones; but the concession here made, while it does not do much good to the auction purchaser, does harm to the tenure-holder. I would omit it.

10. *Section* 8.—Land added to a tenure by alluvion should not be assessed at full rates at first, as it is not fit to bear full crops for some years. It just appears as barren sand, and then becomes grazing land, and not for some years is it arable land. It is evidently intended by the section that the land should be assessed at "customary rates *for different kinds of soil.*" Some words to this effect should be inserted in the section; "the customary rate" in the singular is misleading.

11. *Section* 9.—I approve of the limit fixed, though I do not think it a matter of much importance, as cases must be rare in which the customary rate cannot be proved.

12. *Section* 10.—I approve of the limitation of gradual enhancement to cases of hardship. Without this limitation I should object to gradual enhancement altogether. If a zemindar can prove that the condition of the tenure is at the date of instituting a suit such as to justify him in demanding higher rent, surely enhancement should take effect at once. Inasmuch as the fact of getting a decree for enhancement will bar any further enhancement for ten years, zemindars will not enhance in cases where only a slight increase can be got. They will wait till the grounds for enhancement are such as to justify a solid increase, and in such cases there is no reason why the enhancement should not take place at once and in full. The Rent Commission's Bill abolishes notices of enhancement, and though Mr. Reynolds' Bill does not enter fully into the procedure of Chapter XV, yet it seems that the general outlines of that chapter will be followed. Thus enhancement would only be decreed after long previous notice and full warning, and cases of hardship could rarely if ever occur. I cannot imagine what conditions would constitute the hardship referred to; gradual enhancement being in consequence relegated to the domain of theory, I have no objection to it.

13. At the same time I do not fully agree with the views of the Rent Commission in matters of procedure. I think they have shown too great a tendency to compel all parties to take their disputes into court. My own long experience leads me to favour the practice of amicably deciding matters out of court. It avoids the bad blood which litigation always gives rise to; it saves the parties the expenses of litigation; and it spares the already heavily burdened courts of justice. Ill-feeling arising from litigation is a terrible bane to all classes in this country; it is perhaps the very greatest of all the many hindrances to real progress. Every Collector knows how constantly he is thwarted in schemes of practical utility, because people will not pull together owing to some oldstanding feud, arising in ninety-nine cases out of hundred from a *nalish* or a *mukudduma*. Also the cost of litigation, which is so much more serious for the poor ryot than for the opulent zemindar, often leads the ryot to concede where he is in the right, because he cannot resist the power of the purse. And as regards the third reason, the courts in this country undertake to do far more for the public than those in more civilized countries, and I suppose no Government in the world keeps up such an immense judicial and administrative staff as those of India. Unless the progress of civilization is so guided as to tend to a decrease of litigation, a time must one day come when the Government will be overburdened by the cost of its establishments, if it is not so already.

14. For all these reasons I think settlement of disputes out of court should be encouraged, and among other things the old form of enhancement by notice should be retained, so that the only cases of enhancement that come before the courts should be those of *bonâ fide* dispute where the parties are unable to come to terms without the intervention of authority.

15. *Section* 11.—I should have strongly objected to this section had I had an opportunity of reporting on the Rent Commission Bill. As it is, I am very glad to see it struck out. I will reserve my remarks on the proposed rule for the guidance of the courts in deciding the question till the procedure part of the Bill is issued.

16. *Sections* 19 *and* 20.—It is hardly possible to say much on the question of defining who is a khoodkasht ryot in its present stage. It is one of those curious things that every one understands, but no one can define. I may, however, say that I think the limit of distance as arbitrary and novel as that of time. A man may be a settled ryot who lives more than two miles from his fields, just as much as one who has cultivated for less than 12 years. Baboo Brojendro Coomar Seal gives three miles as the distance. I would fix three miles as a general term, but would distinctly provide by a separate section that a ryot who lived at more than that distance from his lands should be regarded as a settled ryot, if he could prove that he held that status to the satisfaction of the court, as in the opinion of Mr. Justice Norman, quoted by Baboo Brojendro Coomar Seal in his note above mentioned, and conversely it should be open to a zemindar to prove that a ryot was not a settled ryot, even though he lived within the prescribed limit. I am sure we cannot get at the exact definition by any more precise form of words. But, as I said above, the question is hardly in a stage for decision, as the opinions of many important authorities have not yet been received.

17. I approve of the omission of clause (*c*), explanation 3, and of the modification of clause (*b*) explanation 4. I do not think that the under-ryot should in any case have a right of occupancy. At the same time I do not see that the practice of sub-letting should be checked, so long as the landlord exercises a veto on the proceeding. I would go further than section 70 of Mr. Reynolds' Bill, and would make a sub-lease granted without the landlord's permission absolutely null and void. I would do this on the broad principle that every landlord has a right to manage his own land as he pleases, provided he does not infringe the co-existing rights of others. It cannot be said, I think, that the right to sub-let is one of the incidents of an occupancy tenure. I give my opinion, however, with much diffidence, not having seen the discussions on the Rent Commission's Bill, so that I do not know whether any particular point has been virtually settled or not. I can only write from my personal experience, and must ask to be excused if I unwittingly go over again ground already exhausted

18. I am glad to see that it is now proposed not to allow ryots to contract themselves out of the Act, and I quite approve of section 19 of Mr. Reynolds' Bill Though in some places ryots might be trusted to protect themselves against this method of preventing them from acquiring occupancy rights, yet in the vast majority of districts the saving clause would be silently inserted in a potta which the ryot would sign without knowing what he was doing. It is too dangerous an engine to be put into the hands of landlords in the present state of native society.

19. In section 20 I think the new Bill takes moderate and just ground. Practically we cannot and do not prevent transfer of holdings; the practice goes on under cover of one subterfuge or another all over the country, and openly in Chittagong and some parts of Eastern Bengal, in fact, wherever the zemindar is weak and wanting in influence. It is better to legalize existing practices wherever they are not palpably noxious, and as the avowed object of Government in the present Bill is to strengthen the position of the ryot and make him a substantial person, it seems to me that the rights of transfer and inheritance under restrictions necessary to prevent bad results, such as are afforded in the present section, are absolutely necessary to complete the status of the substantial peasant.

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Bare right of occupancy, unaccompanied by the incidents of transfer and inheritance, would be a very imperfect boon to him.

20. The fear of the land passing into the hands of mohajans is a relic of the old sentiment of patriarchal relation between landlord and tenant, which is now fast passing away. The fear of purchase by hostile proprietors is undoubtedly a real grievance, but it is fairly met by giving the landlord a right of pre-emption. I agree with Mr. Reynolds in thinking that it is hardly possible to go further than this without practically destroying the right of transfer altogether. We must either leave the whole subject alone, or deal with it in a way to set the land question at rest for the lifetime of the present generation at least

21. On the same principle I concur in the provisions of clause (*d*) of the new Bill. If it should lead to careful landlords making it a stipulation that non-payment of rent should lead to ejection, so much the better. While I deprecate the policy of compelling landlords and tenants to come into court to settle every little difference, I am strongly in favour of every movement that tends to compel the parties to define their relationships more accurately. The amount of misery caused to the ryot by his inability to compel his landlord to define his exact status, rights, and liabilities is immense. The cultivation of land is becoming every year more and more of a mercantile business, and the sooner the old slipshod way of transacting matters connected with land is done away with, the better for all parties. It is not necessary that they should be forced into court at every turn, but it is necessary that out of court, and among themselves, every man should know exactly how he stands, and have it in black and white, so that if he has to go into court he may not suffer from an undefined or ill-defined position. I observe that Mr. Mackenzie, in paragraph 12 of his note on the Rent Commission's report, would not allow a zemindar to make a stipulation that non-payment of rent should lead to ejection. I think it would be going too far to hold this view; as I said in the commencement of this note, the tendency to benefit the ryot must not be carried so far as to injure the zemindar. The present Bill may sweep away whatever some people think to be encroachments made by the zemindars during the last century on the position of the ryots, but it should not go further than placing the zemindar where he stood at the time of the permanent settlement. It should not turn the tables on him and encroach on his rights, because he has been encroaching on those of the ryots.

22. *Section* 23.—I have no objection to make to this section as it stands, except that in clause (*a*) the landlord's share should be limited to one-fourth, as under clause (*c*) he is only to have one-fourth of the gross produce.

23. *Section* 26.—Notwithstanding the remarks in the note, I am still of opinion that it is unadvisable to drive parties into court where it can be avoided, and I see no reason why a notice to quit should not be served through the Collector rather than through the civil court. It is a purely executive matter and requires no judicial deliberation. I would even for once go as far as Baboo Joykishen Mookerjee, and allow a landlord to evict without the assistance of the court. I do not want to encourage ejectment; but where ejectment is allowed, I would make the process as easy as possible. Where a right is conceded by law to any person, he should not be hampered in the use of that right.

24. Chapter V as now reduced and amended is, I think, unobjectionable; and Chapter VI is an important and very valuable addition to the law.

25. *Sections* 46 *to* 54.—There is no doubt that the fee will always be paid in the long run by the transferree. It will be a matter of indifference to the transferrer in most cases. If, under section 41, the landlord held the transferrer liable to the rent for a period subsequent to the transfer, and got from him by a decree, the transferrer would have his remedy in a suit against the transferree and would certainly recover in a civil court, so that he would for the most part be indifferent to the result, and would not take the trouble to register the transfer. I think it should be laid down that the transferree should be the person on whom the responsibility of registering the transfer lies. He is the person who benefits by the transaction. I fear it will be found in many cases that the landlord will not keep up his registers, and unless there be some tangible benefit derived from registration, tenure-holders also will not trouble themselves about it. Until the attitude of landlords towards their property undergoes a great change, I fear there will be a tendency both on the part of the landlord and on that of the tenant to combine to make this chapter a dead letter.

26. The provisions of section 46, and the fine therein authorized, cannot be carried out without vexatious and inquisitorial interference on the part of Collectors and Deputy Collectors, which will be highly unpopular. I observe that in the margin of the Rent Commission's Draft Bill a note has been made, suggesting that some authoritative value as evidence should be given to extracts from the zemindars' registers, but no provision to this effect is contained in the present Bill. If anything would lead to these registers being kept up, it is this, though, even were such a provision made, I doubt whether the extract from a zemindar's register, open as it is to all sorts of suspicions, will be considered of much value by the civil courts, especially as ample proof of possession or title will generally be forthcoming without it. As the Rent Commission observe, the effort to induce landlords to register has been constantly made and as constantly without effect. If it is to be persisted in, perhaps the provisions of the present Bill are as good as could be devised.

27. *Section* 55.—As in every part of the country there is already either custom or agreement as to dates and instalments of paying rent, clause (*b*) will in a vast majority of

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instances be inoperative. Where it does operate, it will be in my opinion inconvenient. No ryot, as a rule, has money in his hands in Asarh (June). In most districts the rent is paid chiefly in January and February, after the *amun* rice crop is cut and sold. The regular quarterly payment is an European idea and unsuited to Bengal. It is unnecessarily stirring up a matter which has never given any trouble at all to interfere in laying down dates and instalments. I agree with the Commissioner of Orissa in thinking that the matter should be left to existing custom in all cases, as it will even under the Bill in most.

28. Under what circumstances is the Collector to take action in fixing dates and instalments of ryots' rents? Is he to be set in motion by an application from one or other of the parties, or to act *suo motu?* If the latter, it will be as generally disturbing a proceeding as the road cess valuations, the land registration, or the license tax, and is on all grounds to be deprecated.

29. *Section* 59.—I strongly approve of the insertion of clause (*d*); as far as my experience goes, the courts have usually acted on the principle that a receipt for rent for any given year implies that all rent up to that year has been paid, and this clause enforces and carries a step further this principle. I would advise that power be given to the Board to prescribe forms of receipt, as many well-meaning zemindars, from ignorance or a careless habit of keeping accounts, would probably give imperfect receipts, and so lay themselves open to loss under clause (*d*). I hesitate, however, to approve of the proviso that the non-delivery of a yearly statement under clause (*b*) shall make a landlord liable to damages under section 94 (new Bill). I think, if a ryot gets a receipt containing the particulars specified in clause (*b*), he gets enough to protect him—as much as he is entitled to. Section 11 of Bengal Act VIII of 1869 has been found in practice to be a sufficient protection to the ryot, and I see no reason for going any further. I am pretty sure that very few ryots would take the trouble to ask for such a statement, or use it if they got it. Moreover the provision is imperfect. It contains no check upon incorrect statements being given. If a ryot asks for the annual statement, and when he gets it, finds it or thinks it incorrect, what remedy has he? Must he go into court to contest it? If so, where is the section enabling him to do so? If he receives such a statement and does not contest it, is his silence to be construed by the courts into admitting its validity? If the annual statement is to be retained in the Bill, its import and the use to be made of it in future litigation require to be clearly defined. I think it had better be left out altogether, as it introduces an unnecessary complication. It goes further than the *akhiri dakhila*, or *farigh khatti* or by whatever name such document is called, and as from paragraph 124 of the Rent Commission's Report it appears that this is all they mean, it would be far better merely to provide that the last receipt for any year which closes the accounts of the year should contain the information required. As the wording of clause (*b*) stands at present, the ryot would be entitled to receive the statement whether he had paid up or not. Present custom, and I think considerations of public convenience, demand that such statement should only be given to the ryot when he pays up his last instalment for the year. This is what the *farigh khatti* is at present. The statement in clause (*b*) is far more than this, and will simply provide fuel for litigation.

30. I cannot also see without regret the counterpart of the receipt given up. Mr. Ravenshaw and myself introduced this, and worked it with complete success in Orissa. It is true that it was in khas mehals, but I believe it was voluntarily adopted by several zemindars. It is only in the case of an unprincipled zemindar, combined with loss of the receipt by the ryot, that harm could arise The counterpart is a great protection to a zemindar against a not uncommon practice amongst ryots of fraudulently altering the figures in the receipt, while the ryot has only to take the ordinary precaution of preserving his receipt till the end of the year, and then getting his acquittance for the whole year to protect himself against fraud by a zemindar. I think, at any rate, mention of the counterpart might be inserted in the Bill, and the keeping of it made optional, leaving to the courts the duty of weighing it in evidence against the receipt when the two differed. Thus either party when honest would have something to rely on in the event of the other party attempting fraud. The Evidence Act (I of 1872) would guide the courts in judging between the counterpart and the receipt.

31. *Sections* 58 *to* 61.—Whatever may be the objections to clause (*a*) as it stood in the Rent Commission's Bill, I think there are greater to that clause as it now stands. If it is not desirable to encourage the practice of depositing rent, why is it made easier for a ryot to do so? As the matter stands at present, he is bound, at any rate, to make a tender of the money; but as the law is to stand when altered, any ryot will only have to say he has reason to believe that the zemindar will not receive his rent to enable him to deposit. I dare say there was a good deal of perjury in the solemn affirmation that was made under the old law; but I have no doubt there will be just as much false statement under the new, and between false statement made under what the British Government considers on oath binding on the conscience, and false statement made without that formality, there does not seem to me to be much difference. I think we should insist on actual tender, and I look upon the statement, whether with or without the formality, as of no value. If a tender is made, it can, if necessary, be proved by witnesses; this is the real hold, not the solemn affirmation which is generally a solemn mockery. If rents are to be received without previous tender, the Collectors will be inundated with them.

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32. *Section* 64.—The addition of clause (*b*) is certainly advisable.

33. *Sections* 65 *to* 70—Are excellent, but I do not restrict the powers to the District Judge. Subordinate Judges might fairly have these powers. The result of making the Judge himself try the case will often be excessive delay, as the time of the Judge is very much taken up by sessions work; and even when he is free from that work, the unbounded license allowed to pleaders of wasting the time of the court by interminable talking renders proceedings in a Judge's court very slow and lengthy.

34. *Section* 77—As it now stands is, I think, fair and unobjectionable. It was a good thing to remove the clause about tree-cutting, as it was utterly opposed to universal custom.

35. *Section* 79.—Clause (4) as it stands is an improvement on the form it took in the Rent Commission Bill. Abandonment, like domicile, and several other similar acts, is a point which can only be determined by evidence of intention, which varies in every case, and the point can therefore only be settled by a court. No fixed rule as to what constitutes abandonment can be made.

36. *Section* 80—Is very reasonable and fair. I do not think there is any weight in the objections made against it.

37. I approve of Chapter XIII as it now stands.

38. I am very glad to see distraint reintroduced. I think, however, that the permission to distrain gathered crops is unwise. It will open a wide door to fraud. The usual custom in distraint of the zemindar's agent going with the distraining officer to point out the debtor's property will probably be followed in this case. Where the crop is still standing there is little room for error, as the distraining officer has only to find out which are the debtor's fields and distrain the crop that he finds growing there. But if a reaped crop is to be distrained, how is the distraining officer to find out whether it came from the land for which the rent is due or not? An unscrupulous landlord will point out any likely heap of grain he may see, and will easily find people willing to swear that it came from the land in question. Is then the distraining officer to hold a sort of judicial enquiry on the spot? I fear, if he is, things will go badly; for it does not cost much to grease the palm of a peon, and the nazir himself cannot go in these petty cases, nor would it be possible to depute any officer of high standing.

39. As to the procedure of sections 106 and 107, I do not think the mere examination *ex parte* of the applicant will be much protection against fraud. In the absence of cross-examination by the opposite party, the enquiry will be apt to degenerate into a merely formal affair; especially if the permissive word "may" is allowed to stand in section 107, the proceedings will probably be very lax and summary. I would suggest the alteration of "may" to "shall."

40. *Section* 108—Does not say on what evidence the officer is to proceed in determining which are the debtor's crops. This should be indicated for the reasons given above.

41. *Section* 122—Instead of merely allowing the owner of the distrained property to sue for damages for illegal distraint, I think it should be provided in section 112 that the distrainee (to coin a word) may as soon as distraint is made do one of three things—

(*a*) deposit the amount of claim;

(*b*) produce receipts or other proofs that the amount has been already paid, or that he is entitled to have the rent remitted, or the like;

(*c*) institute a suit to contest the distrainer's right to distrain.

On his doing either of these things, the sale should be stopped pending the court's decision.

42. Ryots have seldom much ready money. It is hard to compel a ryot to go to the mohajun and borrow at high interest, in order to deposit the amount of what may turn out hereafter to be an unjust claim. As the law stands, he must either deposit the money or lose his crop. It is a poor consolation to him to be able hereafter to bring a suit for damages and see all his money swallowed up in litigation. Supposing he gets a decree and executes it, and gets his damages, how much of the money will the mooktears and others let him carry home to pay the mohajun whose interest has been running ever since the day the peon came to distrain—a day which will probably be six months or more ago by the time he actually fingers the damages in hard cash.

43. I feel as much as any one the necessity of giving the zemindar speedy process for recovering rent justly due and fraudulently or vexatiously withheld; but it is so difficult to do this without running the risk of allowing an unjust demand to be realized, leaving the ryot no means of recovering it, except long and expensive litigation. It is easy to talk of the landlord furnishing *primâ facie* proof of the justice of his claim, but nothing is easier than to produce *primâ facie* proof of the justice of a claim when the opposite party is not present to put the court on the scent of the concealed fraud.

44. I would not oppose this so-called *primâ facie* proof; let the sections of the Bill stand as they are. But do not make the consequences so absolute and so severe for the ryot: let him have the three courses I have stated above, and let this be done *before* the sale and not after, when the damage done is virtually irreparable.

45. I refrain from making any remarks on the subject of procedure, as I presume the second portion of the Bill containing the procedure will be circulated in due course when local officers will have an opportunity of discussing it in detail. I want personally more time to think it over.

C. E. G.—Reg. No. 965J—132—2-5-81.

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No 9R, dated Bankipore, the 28th April 1881.

From—F M. HALLIDAY, Esq, Commissioner of the Patna Division,

To—The Secretary to the Government of Bengal Revenue Department.

WITH reference to your No 574—235LR, dated 1st March, forwarding copy of a memorandum and revised Rent Bill drawn up by Mr. Reynolds (chapters I to XII), I have the honor to submit the following:—

2. *Section* 3, explanation:—

Bastu.—It would be advisable to insert the words "within the meaning of this section" between "purposes" and "when."

Lease or pottah and kabuliat.—I concur with a suggestion made by Mr. Nolan, the Collector of Shahabad, in his note on the original Bill, that the words "or defining the terms of the tenancy" should be inserted after the words "landlord and tenant."

As he has pointed out, the ordinary pottah given to an occupancy ryot does not create the relation of landlord and tenant, nor does it continue it.

Sections 6 *and* 16.—I am decidedly of opinion that the existing 20-years presumption rule should be retained. The rule in the revised Bill will press exceedingly hard on the tenants. If a suit be instituted in 1881 it will be necessary for the tenant claiming to hold at a fixed rent from the Permanent Settlement to produce receipts 42 years' old. In a suit instituted ten years hence, it will be necessary to produce receipts 52 years' old, so that as time runs it will be more and more difficult for the tenant to substantiate his claim to hold at a fixed rate

Practically the proposed rule will have the effect of abolishing the presumption. True, the presumption was first introduced by Act X, 1859, but the 20-years rule was no doubt adopted because it was considered that under ordinary circumstances receipts for rents cannot be expected to last more than 20 years.

It certainly seems to me rather late in the day for zemindars to be complaining now against the rule of presumption, as throwing an unfair burden of proof upon the zemindar. Since the adoption of the rule the question as to what ryots in an estate are entitled to hold at fixed rates has been thoroughly brought to issue in the courts, wherever the zemindar has been able to find the smallest excuse for contesting the ryot's claims to fixed rates, and there must therefore be but comparatively few instances in fairly well managed estates where doubt of the nature leading to the raising of such presumption can properly exist. Zemindars who clamour for the alteration of the rule can only do so under the conviction that their tenants have escaped the possibility of enhancement under the existing rule, but that (excepting in instances where the point has been determined in the courts) these tenants must utterly fail to benefit by the presumption in the very difficult position they will now be cast by its operation being confined to cases in which uniform payment has to be proved for 20 years before the period when the presumption was first introduced into the law. At the time of its introduction into the law, the very fact, which is noted in Mr. Reynolds' memorandum, that "there is reason to think that rent receipts have been much more regularly given, and much more carefully preserved during the last 20 years, than during the 20 years which preceded them," made it far more easy for the zemindar then to rebut the presumption, than for the ryot to contest the point successfully. Now, when we have made the ryot understand and believe that his fixity of tenure depended on his own action in regularly obtaining and carefully preserving rent receipts, it can scarcely be reasonable to enact, or equitable to declare, that, because he has by his more careful adherence to the requirements of the law rendered any encroachment on his rights more difficult for the zemindar to establish in the interest of that zemindar, he must support his claim to fixed rates by proofs even more difficult to adduce than when the original rule of presumption was introduced. If there was any unfair burden of proof, this is surely casting it very heavily on the ryot's shoulders, to the decided advantage of the zemindar

A further concession is proposed in favour of auction-purchasers, and it is provided that the presumption shall not be pleaded against them, excepting of course any former decisions of the courts. The reason given for the proposal is that, "the law bears very hardly upon auction-purchasers, who are often unable to get possession of the zemindari papers of their predecessors." So that if this provision be enacted, the unfortunate tenant who might have been perfectly able to successfully contest "the predecessor's" refusal to his claim to fixed rates, must suffer, because that predecessor refuses to give up his zemindari papers to an auction-purchaser. It is not clear also, why the tenants of an estate that happens to be *sold by auction* should thereby be placed in a worse position than the tenants of estates not so sold.

There is, however, another reason for objecting to the provision proposed in respect of auction purchasers. A proprietor who is anxious to alter the status of tenants hitherto accepted as holding at fixed rates, may, by defaulting in the Government revenue, arrange to bring his property to auction sale, buy it in himself, and then, in his new position of auction-purchaser, claim that the presumption shall not be pleaded against him. Under the existing rule of presumption, the claim for enhancement would in most cases be capable of being

met by receipts carefully preserved for the last 20 years, but, under the proposed provision, such opportunity would be entirely lost. It may be, that on the faith of the present law, receipts of a date anterior to the last 20 years, though religiously preserved long enough to serve the purpose of the law, have been since destroyed when their preservation was not necessary.

Section 18.—I approve altogether of the amendments introduced in these provisions. The opening words of section 18, though they in fact affirm an old right, a right which by ancient law and custom appertains to all khudkasht ryots, will be looked upon as conferring a new right, the original privilege having been wholly ignored by zemindars

As regards the question whether an under-ryot should be allowed to acquire a right of occupancy in the land of an occupancy ryot under whom he holds, I think it not desirable to lower the status of an occupancy ryot by giving a right of occupancy to his under-ryot. The omission in the revised Bill as to this provision has been, I think, very rightly made. I also support the proposal to enact that if an occupancy ryot sublets without the written permission of his landlord, the crop shall remain liable to distraint for arrears of rent due by the occupancy ryot. This will restrict subletting no doubt.

Section 20.—With regard to the provisions in this section, I observe that the provision in the former Bill prohibiting mortgage of occupancy holdings has been omitted If an occupancy ryot is to be allowed to mortgage his holding, I think this had better be expressly stated in clause (*b*). The restriction on mortgage should not, in my opinion, stand

The Collector of Durbhunga (Mr. Barrow) in his report on the former Bill has, I think, rightly pointed out that if it is bad for occupancy ryots to mortgage, so it is also for petty proprietors. The instance of Tirhoot, where the number of petty proprietors is very large, shows that there these proprietors are not recklessly involving themselves, and there seems no reason to anticipate that an occupancy ryot would act differently.

To all the provisions in this section as they stand I have no objection to offer.

Section 22.—I approve of the addition to this section of the words, "or an interest not less than a life interest."

Section 30 —This should be omitted I do not think the provision will prevent subletting to any extent, and there seems to be no reason why parties in such cases should not be left to settle the rent themselves If it is thought desirable to limit the rent demandable by an occupancy ryot from his under-ryot, why should not the Legislature limit the rent payable by a non-occupancy ryot to his landlord?

Chapter V, Section 31. *Of the use of land for building purposes.*—This section may with advantage be excluded from the Bill altogether. It includes matter which may well be left to be provided for by prescription and custom, rather than by specific rules of law

Mr. MacDonnell, the Collector of Sarun, has very rightly pointed out in his memorandum on the original Bill, that in this province the formation of new "tolahs" shows that when it is necessary to build away from the original village, permission is not withheld.

As a rule, new houses are built contiguous to old houses on the village *deh* or *busti*, not on the culturable land by individual ryots in their separate holdings. It seems to me that the proposed enactment, which has been strenuously opposed by zemindars of this province, will be unnecessarily conferring a right upon a ryot which he will seldom if ever exercise. If advantage ever be taken of the provision, it will as a matter of fact only be for the sake of creating ill-feeling between landlord and tenant, and will be the result of quarrel and dissension between shareholders in an estate. Left to himself the ryot would never think of erecting a separate dwelling-house on his holding, away from the village or tolah; but create this provision conferring such a right upon him, and it does not require much perspicuity of vision to see that it will be merely made the handle with which to stir up strife in the village community, and an excuse for fomenting disturbance in the relations between landlord and tenant.

Section 32.—I would exclude this section also from the Bill. Rights of occupancy should not be allowed in building or other non-agricultural land Here again, the custom of the province shows that there is no necessity justifying the establishment of such a rule, and why then should we go out of the way to run counter to the known feelings of the zemindar without really enlisting the approval of the ryot. I would draw attention to the remark made by Mr. Nolan in his note on the original Bill upon this point, that "under the law as drafted, every tenant of a house in Calcutta who has a lease, of which twelve years are unexpired when the Act is passed, will, at the termination of that period, have acquired a right of occupancy in his compound. This seems not only unfair, but a little ludicrous. If Calcutta and the Suburbs are excepted (and they are not), the injustice will still continue in the rest of Bengal."

Chapter VI Section 34 *Of Merger.*—This chapter appears to me to be out of place in a law as to the relations of landlord and tenant: no inconvenience has been experienced, I believe, from the present state of the law. If the provisions stand, I have no objection to offer to the details, under the alterations now made since the original Bill was framed.

Chapter VII, Section 37. *Registration of Transfers.*—The principle of these provisions is excellent in theory, but I certainly go with those officers who have expressed serious doubts as to the practicability of carrying the provisions into effect. The enactment assumes the existence of a proper registration office on every estate, and indeed on every farm, and more so in the establishment of every *shareholder* of an estate. Definite mention is not

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made in the draft as to whether a ryot is to register his succession in each of the shareholders' rent offices, where there are several rent offices for the same holding; but practically this necessity will be imposed upon the ryot; upon the majority of small estates there is no rent office, and where there are offices, the sure result of the ryot's application for registration would be that the fee would be taken, and there would really be no registration at all. Section 43, I think, holds out actually an incentive to petty landlords for fraudulent practice, under cover of the registration clauses of the Bill. It may be said that section 44 of the draft is a sufficient protection in the interests of the ryot, and so it may be in the case of large holdings or tenures, but not otherwise.

The last clause of section 46, by which acceptance of rent by the landlord will be equivalent in certain cases to the registration of succession or transfer, is, I think, all that is necessary in the case of occupancy holdings, and the necessity for registration should be restricted to the case of tenures or under-tenures.

With special reference to section 38, I would recommend the adoption of the provision as regards the concession to landlords to refuse to acknowledge the transfer of an occupancy holding by private sale, and the right to purchase the holding himself by paying the price to the transferer. This is a concession to which the landlords are fairly entitled.

Chapter VIII, Sections 47 *and* 48.—I have nothing to raise against these provisions.

Section 49. *Receipt for rents.*—I entirely approve of the omission from this section of the words, "the landlord shall retain a counterpart of such receipt, &c.," for the reasons given in Mr. Reynolds' memorandum on the Bill.

It is, however, there said that the penalty provided by what is section 94 of the present Bill will be quite insufficient to secure in the rent receipts the specification of the requisite details as to the instalment and year on account of which the payment is made. Clause (*d*) has, therefore, been added to section 49, in accordance with a suggestion made by the Collector of Shahabad, a suggestion which has been supported by the Collector of Sarun also. Clause (*d*) provides that any receipt which does not contain the particulars specified in clause (*a*) and the name of the registered tenant, shall be deemed to be an acquittance in full of all demands of rent up to the date on which the receipt was given.

It is, I observe, anticipated that such a provision would put an end to the system of giving imperfect receipts, but I would point out that the proposers of this provision have overlooked the danger latent in the application of the clause in question. So far as securing to the ryot the exemption from any further demand of rent for the period up to which this receipt, equivalent to an acquittance in full, is given, the provision will serve the purpose admirably, but it will also serve to give to the landlord, who wished to break down a tenure claimed to be held at fixed rates, the very opportunity to do so. An indefinite receipt of this kind, carrying with it an acquittance in full, would be of no use to the ryot who wished to sustain a claim based on proofs of continuous holding at certain rates, while to the zemindar, the issue of such receipts would be an absolute advantage, to serve for future contingencies.

It will require more stringent provisions than these to put an end to the system of giving imperfect receipts.

As to the direct refusal of receipts, I think with the Collector of Shahabad that that is no longer common, and the existing law on the subject seems sufficient. It is difficult to suggest a substitute for the clause (*d* which carries with it the objection that I have pointed out above, although in itself it is an excellent provision for the special purpose for which it has been framed, and I would therefore retain it, but I would strengthen its application by the addition of some such provision as the following:—

"And shall also be deemed to be a confirmation by the landlord of the rates at which the tenant, to whom such receipt is tendered, has held up to the date on which the receipt was given."

Sections 50 *to* 53. *Deposit of rent in the Collectorate.*—On the whole, the change from the system of making deposits on account of rent receivable at the Moonsiff's court is, I think, advisable, but I doubt whether the provisions of the present Bill will go far towards discouraging the practice of depositing rent, and I am not sure that they will not encourage it. Mr. Reynolds remarks in his memorandum that "it is not desirable greatly to encourage the practice of depositing rent," and in this I entirely agree, yet these sections would appear to render the practice even more easy to apply than under the existing law. The rule, requiring the ryot to make a solemn affirmation, was no doubt a mischievous one, and every solemn affirmation made is a mere sham, as Mr. Reynolds states; it is far better to abolish the rule, for rent never is tendered before deposit. With regard to section 52, it seems to me that the words, "and in compliance with the conditions mentioned in section 51" between "section 50" and "and shall give" should be omitted. Without a special enquiry as to whether the conditions in question have been complied with, the treasury or public officer cannot be assured of the fact, and yet it is not intended, I presume, that any enquiry is necessary, before the officer may give a receipt for the deposit under his official seal. I mention this, because it is just possible that a treasury or public officer might, under the section as it stands, consider himself bound to demand proof of the compliance with the conditions mentioned in section 51. It will be sufficient if the treasury or public officer grant a receipt upon the written application accompained by a fee of eight annas, and by a written declaration in the form A in the second schedule of the Act.

Section 56. *Hypothecation of Rent.*—The new clause (*b*) added to this section is a beneficial provision, and the landlord should justly have priority over other creditors.

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Chapter IX. Of Coparceners.—The provisions of this chapter seem generally good. The rules regarding the appointment of a joint-manager will greatly tend to check evils of coparcenership to which tenureholders and ryots are at present subject I think it would be as well to enact, in express terms, that ryots. or a certain proportion of them, may move the Judge for the appointment of a common manager.

There are, as it seems to me, decided objections to the application of the management of the Court of Wards. The Court's management carries with it under the Court of Wards Act such substantial advantages in the exemption from sale on account of arrears of revenue, and the power of the Collector for the realization of rent without resort to the courts, that the provision in the Bill would be almost a premium on bad management and disagreement among coparceners. I would therefore exclude management by the Court of Wards.

The general result of the appointment of a manager under this chapter would be the partition of the shares under the Estates Partition Act, and the powers of a manager would have to be limited and well defined in view of such contingency.

Chapter X, Section 63. Miscellaneous rights of landlords and tenants.—I thoroughly approve of the provisions in this chapter as they now stand.

Chapter XI, Section 73. Special provisions for Behar.—The provisions here, as now revised, follow generally the opinions expressed in conference with Mr. Reynolds by the officers of this division, and are, with some exceptions, all that could be desired. Section 84, which takes away the right of enhancing rent from thikadars, will, I believe, remove a formidable engine of oppression I take exception to the provisions relating to the commutation of rents payable in kind into money rent. I have already expressed, in demi-official form, my views on this point, and as I believe I do not stand alone in my opinion as to the desirability of abstaining from legislation on this particular question, I beg to reproduce here what I stated before in my demi-official communication, which was as follows:—

On the question of commutation of *bhaoli* rents in Behar, I think that it would be most inexpedient to adopt more active legislative measures for the commutation of these tenures. I not only believe that great mischief could be done if commutation were hastily or rashly carried out, but I think further that in this respect we should leave matters alone. I am not sure that it is a right acceptation that lands on which a money rent has once been introduced are not likely to be ever held in *bhaoli* again. Our experience in the settlement of the Gya escheated lands, recently undertaken, shows that the ryots almost invariably opposed the commutation of the system of *bhaoli*, notwithstanding the specially favourable terms proposed, and my belief is that in these cases an offer of re-commutation would certainly be accepted. It should be remembered that, in these Gya escheat cases. the irrigation works will be maintained by the proprietor as heretofore, notwithstanding the commutation. Such a condition of things would never be maintained where a native zemindar was concerned. I would not confer by direct legislation any power on the zemindar to force commutation on the ryots, but neither would I give the ryot the exclusive right to force commutation on the zemindar. The special condition in the Bill, that the ryot's application for commutation must include all the *bhaoli* lands of his holding, will not be looked upon by the ryot as an unmixed blessing to himself. The restriction, which is considered necessary in the interest of the zemindar, will as a matter of fact make the provision of the law a dead-letter, and things will in reality remain much as they now are. The ryot would probably only require commutation for the best land in his holding, while the zemindar would strive for the reverse, and the condition in the present Bill will not satisfy either party. But supposing the commutation principle in the present Bill be adopted, the deductions proposed in the last clause of section 90 will not be altogether fair upon the zemindar. The conversion of one or two, or even several, holdings of ryots in an estate will not relieve the landlord from the expense and responsibility of maintaining the village irrigation works to the same extent as before, if he did not wish to lose all prospect of profits from the remaining *bhaoli* tenures. The irrigation works then, being maintained by the zemindar as before, it would not be difficult for the ryots whose *bhaoli* tenures had been changed to money rents to avail themselves surreptitiously, or by force, of the benefits of the zemindar's irrigation works. These holdings would be scattered all over the village amidst other holdings not so converted, and it would be simply impossible for the zemindar to prevent the one set of ryots from reaping the advantages of irrigation designed for the other set. All this must certainly be taken into consideration from the zemindar's point of view.

I used above the expression *by force*, because it must be remembered that the zemindar of Behar has not to deal invariably with only the unresisting, helpless ryot, the so represented typical cultivator of Behar There are Brahmins, Babhans, Rajputs, and Mahomedans, who as ryots are perfectly capable of maintaining their own interests, being thoroughly acquainted with the rights they possess under the law, and are also equally capable of combining powerfully against the zemindar in the exercise of supposed rights which they may not possess under the law. These do not form by any means a small class, and must be taken into the calculation in determining the question of the commutation system.

Section 91.—I also take exception to this provision still. It will, I think, raise endless complications, and do very much to introduce cases into the criminal courts. The proposition seems to me to be opposed to the whole nature and character of the "*bhaoli*" system. It enacts that the *bhaoli* cultivator has a right to remove the crops without division or assessment of value, for this will be the practical result. Such a right in the hands of ryots of the classes I have named above, would preclude the landlord from ever getting anything but an infinitesimal portion of rent. As the landlord will not be satisfied with this,

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he will have recourse to either fraud, or to action which it will not be difficult for any ryot to base a charge of criminal trespass upon against him.* We shall have the criminal courts fully employed in the extraordinary number of cases that most assuredly will be brought, and we shall have the Collectors' courts flooded with applications under section 88 of the Bill; in no other possible way can a landlord, who desires to keep himself out of trouble, hope to collect rent from such tenures under the present provisions of section 91. Added to all this, though the ryot is to have the right to claim commutation, the Bill debars the landlord from claiming the privilege. I should say that if we enact provisions sufficiently clear and comprehensive to meet the possible abuses of the *bhaoli* system by unscrupulous landlords, there is no necessity for the enactment of the provision against co-parcenership. The provisions in this Bill do meet this requirement I think; the zemindar will see that it will not be of use to him to claim extravagant valuation and keep the crops on the field, and the ryot will see that he can, at slight expense, obtain a speedy determination of any dispute.

Chapter XIV. Distraint.—By section 104 application for distraint shall be made to the court having jurisdiction to entertain a suit for the rent of the land in respect of which the application is made; that is to say, the distraint procedure will be exercised by the civil court. In section 108 it is provided that notification of such distraint shall be given in accordance with rules to that effect to be hereafter made by the *Board of Revenue.* I conceive this last condition was provided with the intention originally that the jurisdiction in distraint should lie with the Collector, and that mention of the Board of Revenue in the draft has been through oversight retained, for it would seem that the rules in question should more properly, under the present construction of the Bill, be made by the High Court. But I would strongly advocate that jurisdiction in distraint *should* be with the Collector. There the machinery for performing such essentially executive duties is, in my opinion, better adapted for the prompt disposal of such matter, with more thorough supervision than can be, I venture to say, obtained in the subordinate civil courts where the presiding officer's time is so completely absorbed in what probably appears to him the more important function of purely judicial duties. I have had occasion to submit to Government lately instances of occurrences illustrating the great defect in the working of the subordinate civil courts, viz. lax supervision over the executive ministerial officers, such as nazirs and peons: and unless this defect can be remedied, I have great doubts of the expediency of the proposal to entrust the working of the distraint procedure to the civil courts.

R. M.—Reg. No. 1048J—132—6-5-81.

No 127G, dated Noakholly, the 30th April 1881.

From—E. V. WESTMACOTT, Esq., Collector of Noakholly,

To—The Secretary to the Board of Revenue, Lower Provinces.

I HAVE the honor to forward to the Hon'ble H. J. Reynolds a copy of my remarks on the proposed Rent Law, another copy of which has been sent to the Commissioner of the Division.

2. These remarks are written in view of Government circular order No. 1 of 3rd January 1881, and Mr. Reynolds' memorandum of 21st February 1881.

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Notes on the proposed Rent Law by E. V. WESTMACOTT, ESQ., *Collector of Noakholly.*

THE first point which attracts my notice in the Act is the distinction drawn between tenures and ryotee holdings in section 3 of the Act. The crucial point is the definition of a ryot. The difficulty is recognized by the Rent Law Commission in section 13 and following of their Report, but I do not think it has been successfully obviated, nor do I think it is considered so vitally important for the success of the proposed measure as I believe it to be.

2. I approve to a certain extent of the definition now given, no longer subject to the limitation of the area of the holding laid down in section 11 of the previous draft, and that limitation being abandoned, it will be waste of time for me to recapitulate the arguments I previously adduced against it, or to show the injury which it would have inflicted on the substantial ryots, who are the very class of all others that strengthens the country, and that it is the object of a sensible Government to maintain in their privileges.

3. But although the proposed definition of a ryot may be suitable to, and sufficient for, a district like Dinagepore, where there are large zemindars, still, dealing in the majority of cases directly with their ryots, and where the ryots are still the representatives of the original lessees who undertook the cultivation of unoccupied land, I do not find that it removes my difficulties in such a district as Noakholly, where the distinction between tenure-holder and ryots, or the definition of ryot, is one of the greatest difficulties with which I have to deal in making settlements of estates under Act VIII of 1879.

4. I fear that those difficulties have been in great measure caused by the provisions of that Act; for I do not find that they met the officers who made settlements previous to its enactment.

5. In the following remarks I may be thought to be discussing the settlement law rather than that of landlord and tenant, but I submit that I can only discuss the position of the ryot in such lights as have been thrown on it by my own practical experience, and by discussion with persons who have had experience in the matter.

6. Is it the intention of the Act that there shall be, as regards each holding, one person who is a ryot, and that all above him in a chain of sub-infeudation shall be tenure-holders and undertenure-holders, and all below him under-ryots or sub-ryots; or is it to be possible for several persons to possess the rights of a ryot in the same land, holding one below the other? According to the definition of ryot, the latter will be the case, but according to the definition of tenure the former.

7. I will illustrate this by an instance of very common occurrence in Noakholly.

8. Government possesses an alluvial formation in the Megna, an island covered with jungle, and some ten thousand beeghas in extent. A capitalist takes a thirty years' lease of this chur on certain terms, with a right to re-settlement in case he accepts the terms offered by Government on the expiry of his lease. He at once sub-lets to twenty howladars, giving them holdings of about five hundred beeghas each, and these men again sub-let some of their land to neem-howladars in plots about fifty beeghas each, retaining some for their own cultivation and letting some year by year to jotedars or tenants-at-will.

9. At the close of the thirty years' *abadkaree* lease, it is found that some of the howlas have passed into the hands of speculative Hindoos of the non-cultivating classes—mooktears, Court amla, and the like; some are still occupied and cultivated by the original howladars; some partly cultivated by the howladars, partly by their jotedars, and partly sub-let to neem-howladars, and the neem-howlas again are partly sub-let, and partly cultivated by the neem-howladars; and again some howlas having been bought up by the abadkar at sales for arrears of rent, the jotedars under them have occupied for 12 years, and will ask for rights of occupancy.

10. In this case, both by custom and by the definition under discussion, the abadkar is, as regards Government, the ryot, and on resettlement he demands that he should be assessed at a privileged rate, such as is paid by abadkars or abadkaree talookdars in the neighbourhood, and that all the howladars and neem-howladars and jotedars under him are only under-ryots, who are in no wise to be recognized by the Settlement Officer. If he is the ryot, as the Act certainly makes him, and as I think he really is, his contention is correct, and he should be assessed under section 6 of Act VIII, 1879, without reference to his sub-ryots. According to the case law quoted in paragraph 19 of the Rent Law Commission's report, he will be a middleman, but by the definition in section 3 he will be a ryot.

11. I may here mention, however, that, while some abadkars claim assessment under section 6, others, when assessed under that section, claim to be assessed under section 7; but that is merely with a view to cancel the settlement, and by threat of litigation to obtain easier rates from Government. Nothing is really further from their wishes than assessment under section 7, on the basis of the rents received from the sub-ryots; and now that I defeat their artifice by making them state beforehand whether they claim a status under section 6 or section 7, they almost invariably select the former. So elastic a definition is not of much use.

12. So much for Government and the abadkar. The howladar is, however, by no means content with the position of sub-ryot of a ryot, and he appeals in his turn to the definition of a ryot, applying it to himself, and in doing so making the abadkar

a middleman or tenure-holder, and not a ryot; for if the howladar is a ryot, the abadkar is certainly superior to a ryot, and possesses a rent-paying interest subordinate to that of a proprietor.

13. If it be said that what he pays is not rent but revenue, and that he is subordinate to Government, and not to a proprietor, you may alter my illustration, and suppose that he took his waste land not of Government, but of a zemindar.

14. Next comes the neem-howladar claiming to be the ryot, and in his turn shunting the howladar superior to him into the position of a tenure-holder or sub-tenure-holder.

15. Below the neem-howladar again, rights of occupancy may be claimed by some of the sub-ryots and jotedars.

16. According to the proposed definition of ryot, every one of these men is a ryot, and yet, as his sub-tenant in turn makes good his position as ryot, he becomes superior to a ryot, and therefore, according to the proposed definition of tenure, a tenure-holder.

17. It appears to me therefore that the proposed definitions of "tenure" and "ryot" clash with one another, and are far from removing a difficulty which legislative attempts at definition have already caused.

18. Suppose that the abadkar refuses resettlement on the terms offered, and the Settlement Officer finds himself in direct contact with all the tenures or holdings existent on the estate.

19. The recent policy of the Revenue authorities is to recognize the howladar as a ryot with a right of occupancy, and to grant him a privileged rate, deducting a howladari allowance from the rent which would be assessed on a less privileged ryot. But if a neem-howladar is also a ryot, must not his rent be assessed, and must not that of the howladar be assessed under section 7 on the basis of the rents he received, and not under section 6?

20. If the howladar is a tenure-holder, and not a ryot, his tenure should expire with that of the abadkar who created it, and he can have none of the privileges of a ryot. And yet he deserves such privileges; he is a ryot according to the proposed definition of the Act; he has generally actually spent money to bring waste lands into cultivation, and though his tenure may legally have expired, he has equitably a right to resettlement.

21. Government may, in a Government mehal, as a matter of favour, recognise that equitable right and grant him a resettlement; but he is not legally entitled thereto, and the same question may arise where one of the parties is not Government, but a zemindar, a private party—will nothing be done to protect the howladar against a private landlord?

22. Or, again, a howla is sold for arrears of rent and bought in by the abadkar or perhaps by a private speculator, what does the proposed Act do for the protection of the tenants of the howla, the neem-howladars and jotedars, or actual cultivators?

23. If we are to have legislation at all, we must settle all these points.

24. If it be said that the person whom it is wished to strengthen and protect is the actual cultivator of the soil, as it is said, I must point out that the result will not only be injustice to a most well-deserving class, but positive injury to the country, and diminution of its produce. I wish, as much as any one else can wish it, to discourage sub-letting, to discountenance non-cultivating middlemen, and to encourage and strengthen a substantial and thriving peasantry with rights in the soil they cultivate.

25. But I do not always find the class I want among the actual cultivators. Besides the labour and the land, we can have no produce without capital, even if that capital be only a hut, a pair of bullocks and a plough, seed and food enough to support the husbandman and his family from seed time to harvest.

26. I find the class I want among the substantial jotedars of Dinagepore and Rungpore, as to whose position as ryots there can be no dispute, for they all cultivate land themselves, possessing often a dozen ploughs and more. To make these ryots tenure-holders, because their holdings exceed a hundred beeghas, would have been unjust. It would have conferred new rights on their sub-ryots, repugnant to all the custom of the country, and I take it that the definition, and not the creation, of rights is the true province of legislation.

27. And yet the sub-ryot is in part of the land the actual cultivator. The substantial ryot works five or six ploughs by the hands of his sons, nephews, and hired servants; he works five or six more on an *adhiyaree* or *metayer* system, providing bullocks or seed or both, and taking a proportion of the crop; he will work five or six more by letting to impecunious ryots who possess bullocks of their own, but who borrow from him seed and the means of subsistence from seed time to harvest.

28. These adhiyars and pauper sub-ryots are the actual cultivators, but no legislator in his senses would foster them at the expense of the ryot, of whom they hold. Without his capital they are useless, and cannot raise a crop from the soil. No one can lend to them on such favourable terms as the ryot can, because the lender must live on the spot and see that the crop, which is his only security, is not cut and carried off without repaying him his loan.

29. No sensible landlord would let his land, if he could help it, to paupers such as these; but he would do all he could to encourage the growth of a substantial body of tenantry possessed of capital, and would, by light assessments, make their holdings sufficiently valuable to be a security for their rents. I have not seen much of a system under which cultivators borrow from capitalists unconnected with the land, but have generally seen the richer ryots finding capital for their poorer neighbours.

30. If I saw the other system prevalent, I should suspect that the landlords or persons in receipt of rents had, by a short-sighted policy of high assessments, severed the wealthy

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class of ryots from the land, and allowed it to fall into the hands of pauper cultivators not possessed of capital.

31. I do not think there can be two opinions as to the class of ryot to be encouraged in the instance I have given of the jotedar of Northern Bengal and his pauper sub-ryot. It would be absurd to foster the latter and confer on him the ryotee privileges which belong to the former, and it would also be opposed to all custom and tradition. It appears to me unquestionable that the ryot, who will supply capital as well as labour, is the man who will obtain the greater produce from the soil; that it is for the interest of the landlord to refrain from pauperising this ryot, and from depreciating the value of his tenure, which is the first security for the rent, by an excessive demand; that on the contrary the landlord will, if he knows his own interest, do all he can to attach the ryot to the land. I shall presently show that one of the results of the alienation of a landlord's rights by the creation of intermediate tenures is the pauperisation of the substantial ryots, and is therefore mischievous.

32. This substantial jotedar in Northern Bengal is, as regards some of his land, the actual cultivator, but not as regards the rest of it; whence it follows that he being the ryot whose position we desire to strengthen, there are cases in which it is undesirable to support the actual cultivator.

33. There are, however, cases in which the matter is by no means so clear; and, still confining myself to my own experiences, I return to the Noakholly tenants.

34. In Noakholly I look primarily for the parallel to the case of the northern jotedars. Among the howladars and neem-howladars, and in many cases, I find what I want, that is to say, ryots possessed of capital, who are partly actual cultivators and partly the suppliers of capital to dependent cultivators of a lower and more impecunious class, and also (an essential point which I implied, but omitted to mention specifically before) resident on or near the land.

35. But, on the other hand, I find many of the howlas and neem-howlas in the hands of middlemen of the most mischievous kind, who have probably obtained them from the original howladars. Rapacious, speculative Hindoos of the class of mooktiars and Court amla and non-resident, they extort from the cultivators every pice they can, and give back nothing either by way of advancing capital, or by the expenditure by which a wealthy resident benefits his poorer neighbours. It is where the cultivator is in the clutches of such landlords as these that the class of non-cultivating money-lenders arises. The capital expended on the land is small, and on that capital an enormous interest is charged. We have no substantial ryot, but a pauper who starves the land and starves himself, and the gross produce of the soil is lessened, while what there is of it goes to fatten the non-cultivating middleman and the non-cultivating money-lender.

36. In this case my sympathy is with the actual cultivator, and it is the policy of a sound Government to help him; but how are we to strengthen him against an undeserving landlord without weakening that other landlord, the substantial ryot with impecunious sub-ryots, whom we wish to support? I cannot see how legislation is to do it, and I do not see how it is done by the proposed Act.

37. How are we to send the ryot up, and the middleman down, when the ryotee holding may become a middleman's tenure to-morrow?

38. The creation of the middleman's tenure, in which there never is, and can never be, any of the essence of a ryot's holding, is as a general rule mischievous, as involving increased pressure on the tenantry. Theoretically there may be benefit in the transfer of the tenantry from an embarrassed zemindar to a wealthy putneedar or tikkadar, but practically I have generally seen the result to be something as follows.

39. A large zemindar knows that while his ryots are paying him, say one rupee per beegha, they are getting perhaps three from sub-ryots, but at the same time they are substantial and contented, always ready with their rent, and also with a subsidy, if the zemindar buys an elephant, or if there is a marriage in his family, ready moreover to pay a little *mangon*, or so many pice per rupee, if the crop is a bumper one. Their holdings are too valuable for them to risk losing them by not paying their rent; there is no need for the zemindar to harass them by tehsildars or peons; the village mondal is the zemindar's patwari or rent collector, or the village is let on a five years' *izara* lease to one or two of the principal ryots. Both landlord and ryot are content. I know several such estates in Dinagepore and the neighbouring districts.

40. Unfortunately the day comes when the landlord wants money. The mouth of the capitalist waters at the prospect of the lightly assessed tenantry, and he willingly agrees to take a putnee, paying the zemindar the full rent as now received from the ryots, and to pay the zemindar two years' rental besides as *salamee*. He obtains a putnee of (say) twenty villages, in which the whole of the zemindar's rights are made over to him.

41. The whole of the rental hitherto paid by the ryots being due to the zemindar from the putneedar, the latter has to make some arrangement for securing a profit for himself, and the ryots will probably acquiesce in the assessment of a few pice on the rupee, considering it a recognised thing that the putneedar should be allowed his profits.

42. He will not long be content with such a petty profit as this, and the next step he will take will be to threaten a measurement of every holding.

43. The ryots know well that this will show the area of their holdings to be much larger than it has nominally been supposed to be, and therefore they make a compromise to pay as much as four annas in the rupee if the putneedar will forego measurement, calling it *kaboolabeshee* or *zabta maukoofee*.

44. In a year or two more the putneedar will not be content with this, and will enter upon further schemes of enhancement; but as the rents increase, they come in less punctually than before, litigation increases, and every year the number of absconding ryots is greater than in the previous one.

45. The putneedar gets warned. He finds that to realise his enhanced rents in twenty villages requires closer supervision than he can bestow, and he sub-lets his tenures in dur-putnees of five villages each, and the dur-putneedars begin to tighten the screw in their turn till they find the work of pressing the unfortunate ryots requires closer supervision than one man can give to five villages, and they sub-let each village to a se-putneedar, each step of sub-infeudation impoverishing the ryot more than the last, while adding not one grain of rice to the produce of the country, but rather decreasing production by diminishing capital and driving the ryots to abscond, while adding not one pice to the revenues of the State.

46. It cannot be denied that the introduction of such a succession of middlemen as I have tried to describe is a distinct curse to the country.

47. The original and essential difference between tenures such as these and ryotee holdings is a very simple one, and is recognised in the definitions of "ryot" and "tenure" in the proposed Act. If what is granted by Government or by a proprietor is land unoccupied by ryots, the lessee, whatever be his title, is a ryot, whether he be an abadkar leasing ten thousand beeghas, or a petty cultivator leasing five. If, on the other hand, the land be already occupied by ryots, the landlord cannot create a ryotee holding, but can only alienate some of his own rights as landlord over the tenantry, and his lessee is not a ryot, but a tenure-holder.

48. But although I object to the creation of tenures, believing that the multiplication of persons who have to make a profit out of the rents paid by the ryots is mischievous, and although I think the creation of ryotee holdings on a moderate assessment is beneficial to the country, I have already shown that a ryotee holding may, by passing into the hands of a person of the non-cultivating classes, become as mischievous as a true tenure created by alienation of a landlord's rights over tenantry, and I will now go on to show how a ryot himself may by promotion become a mischievous middleman.

49. This promotion is obtained by payment. In Noakholly the jotedar is the lowest on the scale of cultivators, and pays more rent than the ryot, the ryot more than the neem-howladar, the neem-howladar than the howladar, the howladar than the zimbadar, the zimbadar than the talookdar, and so on; and besides the difference in rent, the rank of a ryot gives him his social status in the matter of marriage and other affairs. Rank among ryots being a desirable thing has come to possess a money value, and ryots obtain promotion from their landlords by payment of *salamee*.

50. It is natural that a promoted ryot, sitting at a privileged rate of rent, should prefer in some cases to make his profit rather by sub-letting than by continuing to cultivate, and if he be a talookdar, as many ryots are in Noakholly, I think it would be very difficult for a civil court to recognise the essential difference arising from the history of his holding which exists between his talook, which is a ryotee holding, and a talook which is a tenure formed by the alienation of a landlord's rights over the tenantry. I think the Rent Law Commissioners are mistaken in saying there is no difficulty about the title of talookdar.

51. And so I come round again to the difficulty of defining who is to be the ryot, with the privileges of the old *khoodkhasht kadeemee* ryot.

52. You cannot prevent the ryot's sub-letting, nor transferring his holding, without distinctly robbing him of rights he has long possessed, and therefore you cannot prevent mischievous non-cultivating middlemen from possessing themselves of all the privileges we wish to secure to the ryot.

53 I cannot be satisfied with a rent law which fails to do this. In criticising what is proposed, I ought to suggest something to take its place. This I cannot do. I can only recognise the difficulty of the problem, and, while stating my opinion that the solution has not yet been achieved, I am unable myself to suggest the solution. So far as I can see, all attempts at definition and supplying the civil courts with general principles on which to decide every case that comes before them have failed, and I think in so complicated a matter as the relation of landlord and tenant in Bengal they must fail.

54. We wish to strengthen, or rather to maintain, the position of the substantial ryot possessed of enough capital to cultivate the land without recourse to the money-lender. We do not wish to set up his impecunious sub-ryots against him; we do not wish to strengthen a non-cultivating class of middleman between the ryot and the landlord, and yet we cannot compel the ryot to cultivate himself, nor prevent his holding from becoming occasionally a mere middleman's tenure. The more valuable we make the ryotee holding, the keener will persons, who are not ryots, be to possess it and make it into a middleman's tenure. I do not see how legislation is to stop this natural tendency.

55. *Sections* 6 (*b*) *and* 16.—The alteration of the period from which rent must have been unchanged from twenty years before the commencement of suit to 1839 is just; but I do not see why the presumption is to be allowed even if not pleaded. I fear that to allow that will be sometimes to throw the burden of proof on the wrong party. A blunder is frequently made as regards this presumption, against which it might be advisable to guard. A tenan obtained a lease in a certain year at a certain rent, and twenty-five years after, his lease being terminable, the landlord sues to enhance the rent. It is allowed that the tenant was holding before the lease was executed, but there is no evidence to show what the previous rent was. In this case it appears to me that the burden of proof shall be on the tenant to show that the rent fixed in his lease was not a changed rent, but merely a recital of his previous rent. Practically, I have found that the burden is thrown by the courts on the landlord, to show

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that the rent fixed in the lease was a changed rent. I think this might be more strictly provided against, for I think it clearly against the meaning of the present law and the proposed one.

56. I am not quite sure of the justice of the exception in favour of an auction purchaser It is certainly just that a ryot setting up a claim to hold at a fixed rent should have to prove that his rent has been unchanged for a certain period, and no auction purchaser has the facilities of a hereditary landlord for proving at what date the rent was actually fixed; but, on the other hand, a ryot whose rent really has been unchanged since the decennial settlement is entitled to the benefit of it, and it does not seem just to him to call on him to prove more in one case than in the other.

57. Of course the exception in the case of temporarily settled estates is perfectly reasonable.

58. *Sections* 8, 17.—The rule for the assessment of the rent of alluvial accretions according to area has been very justly altered. A formation when new is worthless, and improves in value year by year as it consolidates. A new chur is not worth more than *one anna* per beegha, perhaps not that, and it would be unfair on the tenant to make him pay more; but in ten years' time it is valuable land, and in another ten more valuable still, and it does not seem fair to the landlord that the tenure-holder should not pay what the land is really worth.

59. *Sections* 9, 10.—I am very much opposed to legislative interference with the enhancement of rents of tenures and undertenures. The terms of a tenure are always easily ascertained, being either settled in writing, or by well known custom in the neighbourhood, and it is in each case merely a question of evidence. I am not aware that any necessity for legislation has arisen; but, on the other hand, if an artificial, symmetrical, and theoretical system is to be introduced, instead of one that has naturally arisen from the circumstances of the country, it must do injustice; and though it may facilitate the work of the courts, it will only be by substituting law for justice—such limitations as 20 and 30 per cent will only lead to litigation and legal subtlety. The courts will glady grasp at them to save themselves trouble, but they will not do justice, as they would, if they ascertained from evidence the terms of a tenure, and the respective rights of landlord and tenant.

60. Moreover if such limitations be allowed, how are they to be applied when there is a succession of five or six tenures one below another?

61. These remarks apply also to section 10.

62. *Section* 11 (*b*).—That rents shall not be enhanced twice in ten years is certainly desirable; but I have not seen any need for enacting such a restriction. I do not remember ever hearing of such an attempt.

63. *Section* 12—Appears to me quite needless. The courts should be at liberty to decide on the nature and accidents of every tenure or undertenure according to evidence. Most permanent tenures are heritable, divisible, and transferable, as herein declared; but some are not so by the custom of the country, and some are not so by special contract; and it appears to me undesirable that the law should interfere in such cases, and bestow on the tenure-holder something to which he is not entitled, by robbing his landlord.

64. *Section* 14.—I have never met with a putnee talook, of which the rent is not fixed in perpetuity; but I am told that it is not the case with all. If so, there are cases in which this section will create a new right, and cause a wrong to the landlord. It is not for the law to define the nature of a tenure, because we cannot be sure that there are no exceptions; and if there is one exception, law and justice become opposed. I consider that the courts must judge of the nature of a tenure in each particular case, and that the Legislature will cause injustice by laying down general definitions. I can see no possible necessity for these definitions. Suppose a landlord sues to enhance the rent of a putnee, he is met by the reply that it cannot be enhanced because it is a putnee. Why should we preclude him from bringing evidence to prove, either that by special agreement the rent of this particular putnee can be enhanced, or that by the custom of that particular neighbourhood the rents of putnees can be enhanced?

65. Clause (*c*) does not provide for a case in which, in order to defraud his undertenants, a tenure-holder allows a sale of his tenure for default, and obtains *benamee* a re-grant of it from the landlord.

66. *Section* 18.—Whatever may have been the original merits of the legislation of 1859 as to the twelve years' right of occupancy, the people have become accustomed to it, and I should not care to see it changed without some very good reason.

67. I need not here recapitulate my objections to allowing a ryot a modified right of occupancy after three years' occupation, because I understand that it is definitely abandoned.

68. The proposal to give every settled ryot a right of occupancy is far more startling, and yet not open to the same objections as the former one. A ryot would have been hunted about perseveringly to prevent his occupying the same land for three years; but I am inclined to accept the present proposal. I presume the words "as a tenant" are to preclude the acquisition of a right of occupancy by a mere trespasser or squatter; but this must be made clear. The definition of a settled ryot may be improved. In the first place, what is a village? It is by no means in every district a unit, as I have observed recently in taking census in Noakholly. What are entered as mouzahs in the thakbust are, I find, often groups of villages all known by different names, and having nothing to do with one another, the thakbust name being absolutely unknown to the people. In the newer alluvial formations these mouzahs are sometimes eight or ten miles in length or breadth. The people live in

isolated homesteads or small hamlets, the names of which seem to alter in the course of years. "Estate," again, appears a very wide area, and I think confusion may arise from the manner in which shares are entered in the *towjee*, if, as I suppose, towjee entries are referred to, though I think it might be made more clear than it is.

69. It is a very common thing in Noakholly for people to undertake cultivation of lands in the islands of the Megna, without deserting their residences on the main land, merely going across for a few weeks at seed time and harvest. Are these people to acquire no rights of occupancy? It will especially affect numerous howladars, whom it has been decided to treat as ryots with occupancy rights. A modification of this section has been proposed since I wrote the above, which I have discussed specially in a separate letter.

70. I think the terms *mokuraridar* and *istemrardar* require definition. If they include ryots whose rent is fixed in perpetuity, as I believe they may, it distinctly robs them to let their sub-ryots get occupancy rights.

71. Khamar, nij-jote, and seer land should also be distinctly defined. I think it probable that much of the enormous amount of litigation which this proposed Act is expected to cause, if it becomes law, will arise upon this clause, as every one will try to prove that his land is such that his sub-ryots cannot acquire a right of occupancy in it.

72. No right of occupancy can be acquired by the sub-ryot of an occupancy ryot. Here I come back again to the definition of a ryot, which I have before discussed at some length. There will be great fighting over this clause. Can no howladar, or other ryot under an abadkar, as before described by me, acquire a right of occupancy? I have heard conflicting accounts, and at one time I believed that the sub-ryot of a howladar could not, by the custom of Noakholly, acquire an occupancy right; but from all the evidence I have since gathered, I think I was wrong, and that a howladar's sub-ryot can acquire such right, and maintain it against the howladar. Then, is the howladar to be a ryot as the definition of ryot in section 3 makes him?

73. *Section* 19.—I have already discussed in a separate letter (No. of 25th April 1881) the question of giving a right of occupancy to all settled ryots, and need not here repeat it.

74. As to allowing a ryot to contract for the non-acquisition of an occupancy right, I am in favour of allowing full freedom of contract, and the feeling of all the natives I know is in the same direction. When a landlord has full power over certain land, and may make it into orchards or coverts for game, not letting it at all, it is illogical to say that if he does let it, he must not do so except according to prescribed rules. Surely a man may let his land with a right of re-entry, if he is not compelled to let it at all. No ryot is obliged to take it if he does not like the terms. I think the term "year by year" will be very fruitful of litigation. I confess I do not see clearly what it means, or whether it includes a holding for thirty or forty years, renewed annually, and subject to a year's notice to terminate the tenancy.

75. A landlord may have a piece of land suitable for a mango orchard, but he is old and disinclined to take the trouble of planting it, though he wishes to reserve the right for his successor. Is he to be precluded from letting the land on terminable leases with a right of re-entry?

76. *Section* 20.—If an occupancy holding is not to be saleable in execution of any decree except for rent, we rob the ryot of a power of raising money on the security of his holding, which is most valuable to him; and although we cannot make an unthrifty man thrifty by law, or prevent a fool from squandering all the money he can raise, I presume we do not wish to deprive a thrifty ryot who has lost his cattle and his savings by flood or famine of the power of obtaining capital on the security of his holding. By preventing ryots from raising money on their holdings, we should deprive the country generally of the power of getting the land cultivated after calamity. The provision seems to be aimed against the acquisition of ryotee holdings by a non-cultivating class of money-lenders; but I do not think that we are justified in robbing a prudent, thrifty man of a security on which he may, in case of need, raise capital, merely in order to protect an unthrifty, imprudent man who must not be allowed to raise money because he will squander it. Wealth comes from saving, and not only land, but all other property, must eventually pass from the hands of the spendthrift into those of the man who saves, and if legislation tries to counteract this natural law, it will only produce confusion and eventually fail.

77. My experience of ryots in Northern and Eastern Bengal is that the great majority of them are too prudent to require protection in this respect; and besides, when the capitalist and the borrower are both of one mind to evade the law, I am confident that they will succeed in doing so by some *benamee* transaction or otherwise.

78. As to the concluding clause of this section, I need not repeat objections I have already expressed to interference with freedom of contract. As to a ryot paying compensation to a landlord, it is not very likely that a landlord will want compensation so long as he can get his rent, and if he cannot get his rent, any orders for payment of compensation are likely to remain a dead-letter and a farce, as the ryot is pretty sure to be insolvent. If a ryot will not pay his rent, we are bound to help the landlord in getting rid of him as soon as possible. Clause (*e*) of section 20 requires some explanation. I certainly think that an occupancy holding should be sold as the first step to the recovery of arrears of its rent; but it must be made clear that the ryot is to go and give up the holding to the purchaser, whether the latter be the landlord or a third party.

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79. *Section* 21.—I have already expressed my objection to laying down arbitrary limitations Let the courts decide in each case on the evidence, and do justice. The proportion of produce to labour varies so very much with different crops, that we shall only do injustice if we lay down a hard-and-fast rule.

80. *Section* 22, *Illustration* (c) *of ground* (2).—If the ryot is found to have been paying rent for 37 beeghas when he really held 45, the presumption is that, at the time of the let, he or his ancestor bribed the ameen, or the zemindar's amla, probably both, and it is now proposed that the zemindar be not allowed at any subsequent period to remedy this wrong by re-measurement. I cannot see the justice of this. The zemindar is as much entitled to protection against a dishonest ryot, as a ryot against a rapacious zemindar. In all these cases it will be for the courts to enquire whether the basis of the original assessment was area or boundaries. If the ryot was to pay (say) Rs. 50 for a certain plot of land said to be fifty beeghas more or less, within certain fixed boundaries, the rent is fixed for the plot independently of the actual area, and cannot be enhanced by subsequent measurement; but if the ryot is to pay a rupee per beegha for the said land, the case is different. The law cannot help us here The courts must decide each case on its merits. In the illustration given, the presumption is that A had connived at false measurement, and he should certainly be made to account for the extra eight beeghas, if his rent was fixed on the understanding that the area was 37 beeghas only.

81. *Section* 22, *Explanation III* —I have already, in my previous report, spoken strongly in favour of an authoritative table of rates to be fixed by the Collector of the district. I would not support it if I considered it an innovation; but I believe it to be thoroughly in accordance with the customs of the country that there should be a periodical authoritative revision and declaration of rates I find in Dinagepore, a district where the relations of landlord and tenant appear to have been less subject to modification than elsewhere, a universal respect paid to the pergunnah *nirikh* or rate as laid down by the great Collector Mr. Hatch in 1790. Until the legislation of 1859 introduced ideas utterly inconsistent with old traditions and customs, no one dreamt of tampering with or enhancing Mr. Hatch's rates. It is true that the rents had been raised, but nominally they had not. The true rent remained unchanged; but the ryot had agreed to pay certain cesses under the name of *mangon* or *batá*, which virtually raised the rent in some rough proportion to the changes of the relative values of silver and produce. I think it most improbable, indeed impossible, that this respect for the authoritative *nirikhs* should have been of new growth from the time of Mr Hatch's reforms, and believe that there always had been an authoritative *nirikh* respected by the people.

82. And secondly, as to periodical revision of the *nirikhs*. If there had been no such revision, we should have found the assessments, when we assumed the dewanee in 1765, still in the *dams* of the Emperor Akbar two hundred years before. The changing proportion between the values of money and produce naturally rendered periodical revision necessary.

83. We made one of our legislative blunders in our settlement of 1790; we were assessing the Government revenue, and we stated clearly enough what Government was to receive; but the country is suffering now from our omission to perform the other half of the work, and declare what the ryot was to pay. Hatch did it in Dinagepore, and probably some Collectors did it elsewhere, but it was not done generally. The consequence is that in Dinagepore the relation of landlord and tenant is more satisfactory than elsewhere. What had to be done was, first, to declare what share of the gross produce was the property of Government; secondly, to assess on that share a money value; and thirdly, declare how much of its share Government would forego for the costs of collection. Instead of this, in many districts I believe no notice was taken of what the ryot paid as the Government share of the produce, but only the net revenue paid by the zemindars was considered. The most essential point was neglected.

84. Having imperfectly done the work of assessment, we next bound ourselves to forego all right of revision for the future. We protected the zemindar against ourselves, but not the ryot against the zemindar. Mr. Hatch and such of the Collectors as did their work equally thoroughly did protect the ryot by authoritative tables of rates, and consequently the ryots are a thriving and substantial body to this day.

85. But we must not think that, after blundering for so many years, we can ignore all the results of our blunders, and go back to the simple principle of declaring what proportion of the gross produce the ryot is to pay. New rights have grown up from our mistakes and innovations, and those rights we must not ignore. Contracts have been voluntarily made, and I am very strongly of opinion that every contract should be enforced.

86. Here in Noakholly there have grown up several ranks of ryots, each entitled to hold at a certain rate higher or lower than others, and I think these ranks should be recognized

87. Nevertheless I think that, on the basis of what is actually being paid, a Collector ought to be able to prepare tables of rates for different parts of his district.

88. And yet here comes a difficulty, the same that I have discussed before, in speaking of the definition in section 3—that of saying who is the ryot.

89. I have indicated, as clearly as I could, the ryot whom I wish to encourage, who is not always the actual cultivator; but I cannot see how protection is to be afforded to him, and also to the actual cultivator who holds of a non-cultivating middleman and gets his

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capital from a non-cultivating money-lender, and yet to be withheld from the non-cultivating middleman who may any day take the place of the occupancy ryot.

90. I would stop sub-letting if I could, but I consider that it would be unjust to do it, now that it has become a custom of the country. As a thrifty, saving ryot becomes rich, he will sub-let part of his holding; and I consider it necessary that he should have some of it cultivated by sub-letting to sub-ryots whom he helps with his capital. It is not our policy to transfer the land from his hands to those of his impecunious sub-ryot, and yet I do not see how we can prevent his holding from occasionally falling into the hands of the non-cultivating middleman.

91. I do not require the ryot to cultivate the land either with his own hands or with hired labour, though I prefer seeing part at least of his holding so cultivated; but I require that he should be resident on the land and supply capital if he does not supply labour. This capital is not always wholly supplied in seed, or implements, or plough-cattle, or maintenance of the tiller of the soil, though generally a large part of it is so applied; but it is also expended on roads, bridges, tanks, farm buildings, embankments, and (not entirely without benefit to the land) in charity and religious observances and buildings.

92. If the actual cultivator is not himself the ryot, I wish that he and the ryot between them should supply the three requisites of land, labour, and capital without going to a third party for the capital. If the non-cultivating money-lender comes in, the ryot becomes a pauper.

93. Plainly then, if the ryot does not possess the necessary capital already, we should place him in a position in which he can by thrift accumulate capital; but how are we to counteract the natural law which makes rent rise where there is competition for land? Do you think that, if the law says that no cultivator shall pay more than half his gross produce as rent, and owing to the scarcity of land cultivators are willing to pay three-fourths the gross produce, that the landlord and cultivator will not between them devise some means of evading the law?

94. In my previous report I entered at length on the manner in which the Collector should prepare his tables of rates, but it does not appear necessary to discuss that part of the question now.

95. *Section* 26.—Considering the delay of procedure in the civil courts, and the amount of money the litigants have to waste on the amla, mooktears, pleaders, and birds of prey that infest the courts, I think it is hard that a landlord should not be able to evict a defaulter without going to the civil court.

96 *Section* 28.—It looks very plausible on paper to say that the landlord is to be entitled to recover this, that, and the other, from a ryot, but such a decree is nothing but waste paper. The landlord would lose all the expenses of his suit and his rent, and would have only the barren satisfaction of a decree against the ryot. It is quite hopeless to think that he would get any money from him, and the revenge of keeping him in jail (if he is lucky enough to be able to catch him) would be dearly bought, adding to the other expenses the cost of his maintenance while in jail. The failure of courts in the execution of their decrees is notorious, and it must be remembered that it is not the substantial ryot who gives the landlord trouble, but the man of straw. A good ryot's holding is too valuable for him to risk losing it by not paying his rent, and it is too much the interest of the landlord to keep a good ryot for him to rack-rent him, and either drive him away or impoverish him.

97. The persons who would benefit by these provisions would be primarily the court amla, mooktears, and pleaders; and secondarily, the grasping middleman who has got into the place of the landlord, and who by a short-sighted policy is rack-renting the ryots and reducing them to poverty. I do not pretend to know what may be the case in Behar, but from my own experience I am of opinion that the majority of landlords are too well aware of their own interests to reduce a substantial tenantry to penury by rack-renting them, knowing that a landlord's best security for his rent lies in the value of the ryot's holding, and that, on the other hand, no good ryot whose holding is valuable will imperil it by not paying his rent. Those ryots who give most trouble in the collection of their rents are those whose holdings are not sufficiently valuable to form a security for the rent; that is to say, holdings which are too highly assessed, or holdings in which the tenant has no occupancy right. I do not find that the Maharani of Dinagepore has any difficulty in realizing her rents from her thriving and lightly-assessed tenantry, who, if asked to pay more rent than they find their holdings worth, would simply go to another landlord; nor in wards' estates and khas mehals do I find any trouble in realizing rents from tenants whose holdings possess a saleable value. If a ryot allows his holding to be brought to the hammer, it is because it is not worth his while to keep it. This may be due to natural causes—diluvion, drought, salting, the ravages of wild animals, or the like—or it may be due to the action of the landlord. In either case the landlord ought to reduce his demand, and then he would lose neither his rent nor his tenant.

98. It appears to me that the proposed legislation proceeds on an assumption, which I believe to be a mistaken one, that landlords wish to get rid of their tenants. I believe the very reverse of this to be the case, and that good landlords, who are not so rare as seems to be believed, are too glad to have the security of responsible and substantial tenants to wish to disturb them.

99. Protection against arbitrary eviction should undoubtedly be given to every settled cultivator who pays the established rent; but it appears to me that it is as much the interest

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of the landlords, as of the country at large, that the land should be in the hands of a substantial tenantry free from debt, and in a position to save and bear the pressure of occasional bad seasons.

100. I have not seen the necessity of legislative interference, because the interest of the landlord is sufficient protection to the good ryot. The question is whether a bad ryot is worth protecting. I have already stated plainly my opinion that the actual cultivator should not be protected against the substantial ryot who sub-lets to him, finding capital as well as land. The ryot I wish to protect is the man who has capital as well as labour to contribute. Here, however, comes in the question of the impecunious cultivator, who obtains land only, and not capital, from his landlord, who obtains his land from a non-cultivating landlord, and his capital from a non-cultivating usurer. This is the ryot of whom I read that he is ground down by usury, and that the country is cursed by money-lenders. Personally I have not met with him. I have found that the capital used for agriculture in Bengal is in the hands of the thrifty saving ryots, and that they lend it to their unthrifty neighbours, and to those who are still struggling into the position of a cultivator who has capital enough without borrowing, and capital will always be advanced on terms proportionate to the security, and I cannot sympathize with the outcry against the high rates of interest charged. Can you expect a man, whose debtors have no security to offer but their crops, to lend outside a limited area, within which he can see that seed is actually sown and that the crop is not carried off by night? If he can only lend within that limited area, must he not raise his rate of interest beyond what it would be if he could safely extend his operations and lend his money to a hundred persons instead of to twenty? If every ryot has a holding with a saleable value, which will be security for the loan, the capitalis will always advance money at a reasonable rate, 8 or 10 per cent So long as the security is bad, the interest the ryot will have to pay must be enormous, and legislative interference with the rate of interest would be ridiculous.

101. What we have to enquire into is the reason of the badness of the security, and the possibility of improving it. As such a state of things has scarcely come within my experience, it will be more profitably discussed by others. It appears to me, however, probable that it is the action of the landlords that has severed the substantial ryots who possess capital from the land and prevented saving. The value of the holdings must have been diminished by excessive demand of rent.

102. So far is this from being the case in Noakholly, that I know of cases now where landlords are offering their ryots *kaimee* rights, or rights to hold at fixed rents on their present assessment without payment of *salamee*, and the ryots refuse them. They say that some years they may like to till five *kanees*, sometimes only two, or perhaps none, and that they can always get land at a reasonable rate if they want it; landlords who receive such a reply as this are not likely to have recourse to arbitrary eviction.

103. I suppose that my experience has lain in districts where there is more competition among landlords for ryots than among ryots for land, and consequently I am unfitted to speak of a state of things where ryots compete together for land. I conceive that I am doing my duty in pointing out that the legislation proposed is not required in the districts I know, but that the relation between landlord and tenant may safely be left to natural laws.

104. Any opinion I might entertain as to a state of things which induces ryots to offer higher rent than they can really afford to pay, and which quite precludes their saving, would be more or less theoretical. It is a very wide question. Possibly the solution might be found in some such limitation of the demand from the ryots as I think unnecessary and objectionable in the districts I know, but I do not feel competent to discuss it. *Ne sutor ultra crepidam.*

105. *Section* 30.—I do not see the justice of making the rent a ryot gets from his sub-ryot depend on the rent he has himself to pay. If he has the privilege of holding, for instance, at a fixed rent, why should he get less from his sub-ryots than his neighbour gets, who has no such privilege, but who pays the full pergunnah rate?

106. Again, why is a sub-ryot's rent to be limited to 30 per cent of the gross produce? It is very common for a ryot to hold on an *adhiyari* or *metayer* agreement, under which he pays half the gross produce, but the terms vary according to the contributions of the over-ryot as to seed, or the use of cattle or implements Why should the law interfere with free contract in such matters? It is impossible to distinguish between what such a ryot pays as rent, and what he pays as interest on capital.

107. *Section* 31.—I have not seen brick-built houses suitable for ryots' occupation, and I think there is much in this section which leaves room for evasion.

108. I do not remember meeting with any cases in which legislation as regards building land was necessary, but cases might arise.

109. Practically, if it be required to build on agricultural land, as if a new mart springs up near a railway station or river or sub-divisional court, the occupancy ryot is the man who primarily gets the benefit of it, The person who wishes to build must first get a title from the ryot. Secondly, however, the ryotee title is of little use while the landlord has a right to enhance, and consequently the landlord must make the rent *kaimee* or *mokororee*—fixed—and will get his share of the increased value of the land as a *nuzzur* or *salamee*. This system seems to work well, and not to call for legislation. If a man is fool enough to build without getting a *kaimee* title, the landlord may of course give him trouble by enhancing, but I think people may be left to take care of themselves.

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110. The person wishing to build on a certain plot of land cannot do so without obtaining the permission of the ryot and of the landlord, or perhaps of a succession of landlords. The ryot cannot be ejected from the land against his will so long as he pays his rent, and therefore his claim must be satisfied, and then the landlord's right of enhancement must also be bought up by payment of *salamee* or *nuzzur* for a *kamee* title.

111. If either party asks too high a price, the intending builder will give up his intention of building, and I do not see that either party can put undue pressure on the other, such as to call for legislative interference with their free bargain.

112. I think that the commonest case will be where the formation of a railway station makes the people move to it as a mercantile centre, and endeavour to obtain building sites on the neighbouring land.

113. Reading section 22 carefully, I am not sure whether a landlord would, under the proposed law, have a right to enhance the rent of land because its value had risen as building ground, and if he has no such right, it is illogical to give him a right of *veto*. This would give the ryot the whole benefit of the rise in value, which is inconsistent with custom and tradition.

114. Practically the intending builder must first satisfy the ryot, and then the landlord. If he cannot do so he will not build, and therefore it is the interest of all parties to come to terms. I have never met with a case calling for legislative interference, and would leave the matter to the natural operation of the law of supply and demand.

115. No provision seems to be made for the huts of dependents and sub-ryots, which generally cluster about the *baree* of a substantial ryot, and with which the landlord may or may not have a right to interfere.

116. *Chapter VI. Merger.*—I do not see what is the point of the presumption of merger. Condition 4 of section 34(*a*) seems to prevent its having any effect on anybody, otherwise the purchase of a ryotee holding for arrears of rent, and its absorption into a superior interest, would materially improve the condition of the sub-ryots.

117. Primarily, where an interest in land is sold to any one, the presumption would be that the purchaser, whether a superior holder or not, simply steps into the position of the previous possessor; and this I think accords with the general practice. There are however exceptions, and the landlord who buys up a howla does sometimes merge it in his superior interest, which he calls making it khas.

118. As the proposed law leaves the landlord the option of preventing a presumption of merger, I do not see that the measure is open to much objection.

119. There is, however, this to be considered. A landlord may be possessed of a private fortune independent of his interest in the land, and out of that private fortune he may buy up subordinate interests in his landed estate sold for arrears of rent. Subsequently, a flaw may be discovered in his title as landlord, and he may lose his estate It appears to me unjust that all the subordinate interests purchased with his own money should be held to be merged in his superior interest, and lost with it Possibly this may be guarded against in the words "in the same right," but the meaning of them is not clear to me.

120. Again, there is the very common case of an izara or farming lease. Cases occur in which the izaradars, even in Government estates, when holding on long leases, such as twenty or thirty years, buy up howlas which they bring to sale for arrears of rent, and on re-settlement on the expiry of their leases of the estate set up a howla right adverse to the right of Government, and claim settlement as howladars to the exclusion of the sub-ryots. How is the presumption of merger to apply here?

121. *Section* 37.—I believe the principal reason of the failure of every legislative attempt to secure punctual registration of transfers has been that both landlord and tenant consider it their interest to obscure as much as possible their mutual relations. This may have arisen partly from a traditional fear of allowing the State, the great taxing power, to know more of the truth than could be helped; but partly also from a mutual determination of each party not to be content with his own just rights, but to get the better of the other if possible. While it has always been the object of the Legislature to define rights, it has on the other hand been the object of both landlord and tenant to leave their rights as indefinite, as obscure, and as elastic as they could. Hence the frustration of every legislative attempt to secure registration of transfers, or interchange of leases, by a quiet obstructiveness on the part of both parties whom it has been desired to benefit. Averse as I am generally to all legislative interference, except where a wrong cries out for remedy, I believe that this studied indefiniteness and obscurity, arising from the dishonest intentions of both parties, is an evil with which it behoves the State to grapple.

122. I think that the reason why most of the well-meant legislative attempts to benefit the people of Bengal have failed is because they have overstepped the limits of the true province of legislation, and from sentimental benevolence in endeavouring to relieve a class which seemed to be oppressed, have attempted to create new rights instead of merely declaring and confirming those already existing. If a man or a class is treated with injustice or oppressed, it is because he is denied his just rights, and in his just rights it is the duty of the State to secure him; but we cannot create new rights for him without wronging some one else In registration, however, we attempt to do no more than record the just rights of both parties, and this I think we may legitimately do.

123. In the proposed provisions, however, I find nothing which would not be evaded, even as all previous legislation has been evaded, by the inaction of the people.

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124. Not only the landlord and the tenant, but the rapacious zemindari amla are interested in the matter, and while I believe that both landlord and tenant would be benefited by compulsory registration, it would strike a blow at the profits of the amla, and their cousins the mooktears, who are the true wire-pullers in all zemindari action. To put a stop to *benamee* transactions would ruin half the amla in Bengal, not to speak of persons of a higher class, and while the landlord's *sarrishta* is entirely in the hands of this depraved class, no one practically acquainted with the question would suggest that a registration of transfers or any other form of definition of rights should be placed in their hands. Every entry in a register is a blow struck at their power and their profits, and it is absurd to hope that they will act against their own interests.

125. Registration of transfers can only be secured by making at least one of the parties see that it is his interest to register, and a paltry two per cent fee will not make it the landlord's interest. The ryot likes to leave himself a loophole by which he may wriggle out of his obligations, so he does not think it his interest, and the question is, how to make it the interest of some one?

126. Payment of succession duty is a familiar idea to the native mind, which has never understood the fatuity by which the State has relinquished this old source of revenue in the case of zemindars, who, as late as the time of Mr. Hastings, always paid heavily for their *sunnuds* on succession, though not so heavily as under a Mahomedan Government. Every tenure-holder and ryot in turn used to pay his landlord a succession fee, and it is partly to avoid it that the ryots have failed to register, while the amla make more out of them by not registering than they would by the fees.

127. The landlord's *sarrishta* having failed as a registration office, and there being no difficulty about raising fees to support registration offices, I see no objection to the work being undertaken by the State, which has the machinery ready to hand, in rural registration offices throughout the land. Enact that no title of any kind, from a ryot's occupancy right upwards, should, unless duly registered, be recognised in any court, in any suit for arrears of rent from tenants or sub-tenants, in any dispute about land, in any answer to a suit for enhancement or ejectment, in any one of the many claims of right which bring the people to the courts, and then see whether they would any longer omit to register. As soon as they have time to see the practical working of such an enactment, they will crowd the registration offices. Next, the landlords will wake up, and complain that they are defrauded of their succession fees, and though they have not done the work for which those fees were payable, they may make out a case for compensation. Should this be conceded, the ryot might be made to pay *talabana* for service of a notice on the zemindar, who should on application be entitled to half the registration fee.

128. I am not sure that it is necessary for a landlord to be able to demand security on the registration of a transfer, as the tenure, if easily and promptly saleable, as it should be for its own arrears, seems to me sufficient security.

129. *Section* 38.—I do not see how the landlord is protected against fraud. A tenure-holder may conspire with some person, to whom he knows that the landlord will object as a tenant, for a nominal transfer at a sum beyond the value of the tenure. Is the landlord to pay this exorbitant price, or else accept the objectionable tenant?

130 *Chapter VIII. Section* 47.—I do not think any legislation is required for the regulation of instalments of rent. The kists vary very much even in different parts of the same district, and are generally fixed in the interest of landlord and tenant in accordance with the seasons for harvesting the various staples. If legislative interference is determined upon, the matter should be fully discussed with landlords and tenants in every locality.

131. If there is a heavy kist due in January, and payment of it is postponed till the middle of March, it may cause serious loss. A ryot, especially of the poorer classes, must pay his rent just when he has his money in hand, and three months later the money will probably have disappeared

132 It is possible that landlords in some places may approve of this provision, but I have not met with any who wish for it.

133. *Section* 49. *Receipts for rent.*—I see no objection to these provisions; 49(*d*) I think particularly good.

134. *Section* 50. *Deposit of rent.*—The Commissioners are aware how the law is abused by false allegations of tender, and I do not see that due provision is made to deal with the evil. If the ryot does not lie in saying he tendered, the zemindar's amla will lie in denying it. The ryot, however, will not come to deposit his rent without some sufficient cause, and I do not see any objection to giving up the allegation of tender altogether, increasing the fee payable for deposit if there is any fear of the ryots abusing the privilege. A common reason for depositing is the exorbitant demands of the zemindar's amla for perquisites, such as *tohreer* for themselves; otherwise deposits are generally made because the landlord is enhancing.

135. *Section* 54. *Apportionment of rent.*—Do the Commissioners really believe that a ryot pays nothing but his rent when he goes to the zemindar's cutcherry, and that, if he has to go to three or four *mal* cutcherries, he will not have to satisfy the demands of three or four sets of rapacious amla instead of one? Section 134 of the report shows that they do not. The question of dealing with the sub-divisions among co-sharers of a landlord's rights is a very difficult one. It is a very serious evil, impoverishing the ryot and the land, and the proposed Act does not deal satisfactorily with it. If I were trying to deal with it, I should be inclined to consider the practicability of substituting rent charges or mortgages for the present

mischievous system, so that, if three brothers succeeded to an estate, there should be no sub-division of it, but that after deducting charges of collection, repairs of buildings, Government revenue, rents to superior landlords, and all similar outgoings with a margin for bad debts, the net profits should be divided into three parts—one brother taking the estate, and each of the others a rent charge to the value of his share, secured by mortgage. I do not think that this would be an evil as possibly leading to a sale of the estate, either entire or in blocks, because those blocks would not be mere shares in rents, but specific lands. However, the question would require working out in detail.

136 *Section* 56.—I quite approve of this section, especially as regards the occupancy ryot. I do not know whether section 207 of the previous draft is to be retained, but it is part of this question. As regards clause (*b*) of that section, there should be a provision to prevent fictitious bidding against the decree-holder, should the latter be compelled to bid.* The landlord can generally afford to pay a better price for a tenure than any one else can, and he generally buys in tenures sold for arrears of rent in order to cancel them. I do not see what legislative interference is required.

* I cannot quite see the reason of compelling the decree-holder to bid.

137. *Chapter IX.*—I have already said something about co-parceners. I remember going into this very difficult question when Sir Richard Temple was making enquiries about it, and I found the principal difficulty in the way was the injury which one troublesome and litigious co-sharer could inflict upon his honest co-sharers, who might be living quietly among their ryots, and doing their duty by them. I have not much faith in the half-hearted management of paid managers, especially natives, and consider that under a Government manager not only are the expenses of collection and management greater, but the actual income smaller than under the zemindar. Many zemindars save the wages of a manager by managing an estate themselves, and they pay their amla much less than they can be paid under Government, because it is an understood thing that they are partly paid by *tohreer* or other contribution from the ryots. The ryots will pay *tohreer* just as much under a Government manager as under a zemindar, but Government cannot recognise it, and will pay the amla full wages besides. I think it very hard on a good landlord that some blackguard co-sharer should compel him to give up the management of his estate to a Government nominee, and would rather enquire for some means of enabling him to buy out a co-sharer. Quarrels do not often arise when all co-sharers at once succeed to an estate. It is generally when a share is again sub-divided among distant branches of the family, or when a share is sold to an outsider. There is generally one person who is principal co-sharer, or head of the family, or who has been managing the joint estate for some years. I should like to enable such a person to buy out the petty co-sharers, either by a sum paid down as capitalized value of their share, or by a rent charge or terminable annuity. I certainly would not compel the co-sharers to accept a manager on the motion of one of them, but if one of them were willing to accept the management, I would give it to him, or to the larger sharer if several were equally willing, and would enquire how I could best secure the payment of annuities to the other sharers. The annual value of the shares could easily be ascertained, and arrangements could be made for subsequent abatement in the case of diminution of assets. There would be the possibility of a case in which two equal sharers were equally willing to undertake the management, in which case we might fall back on primogeniture. I do not think there are insuperable difficulties in the way, and I prefer some such arrangement to the appointment of a manager by Government.

138. As to the question whether the manager, if there be a manager, should be appointed by the Judge or the Collector, I do not think it much matters, as either officer would probably make an equally good choice. It appears, however, rather an executive than a judicial matter, and the Collector would be better able to supervise the management than the Judge.

139. I think clause 2, section 58, objectionable. It is very difficult to get rid of a man when once appointed, and it is most undesirable that, because a man has already the management of certain estates, he must also get the management of others

140. *Chapter X.*—I have no remark to make on sections 63, 64, 65, 66, 67, and 68, which seem unobjectionable. Section 69 is an improvement on the previous section 77, which allowed a ryot to plant good arable land with trees, cut them down, and leave the butts in the ground, rendering it useless for cultivation. It leaves, however, much room for litigation. Whatever may be the case in the drier climate of Behar, tanks are in Bengal as often mischievous as beneficial; an embankment may be merely a convenient path to the ryot's *baree*, though he may plead that it is a protection from flood; a ditch may be mischievous and the ryot says it is for the drainage of his land, and so forth. The section as it stands will do more harm than good; and I think the landlord should have the power of preventing any of the operations indicated.

141. *Section* 70.—Is a serious innovation. I think, however, the reservation to the landlord of the right of distraint is good and just, and I would not oppose the section.

142. *Section* 71. *Clause* 5.—I do not like the provision that no ryot shall be ejected otherwise than in execution of a decree or order of the civil court. Everything should be done to facilitate the ejection of a ryot who does not pay his rent, and I would throw on the ryot the burden of going to the civil court. The landlord might serve a notice on him through the court or the Collector, and, if not disputed by the ryot filing a suit within a certain time, the ryot should go. I object very much to compelling the landlord to go into the civil court.

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143. *Section* 72.—In my previous report I expressed my objection to this section then numbered 80. If a ryot has failed to pay rent for previous use of the land, he should forfeit his crop, which is hypothecated for the *kist* or instalment which falls due at the time of harvesting such crop. If he is already a defaulter, it is ridiculous to pretend that the landlord will get anything by considering him still further liable. The provision appears unjustly onesided, entirely in the interest of a dishonest defaulter.

144. *Respecting Chapter XI.*—Never having served in Behar, I have nothing to say; but from what I have heard or read of the circumstances of that province, I am inclined to think that mischief may be avoided by giving up the attempt to legislate at one time for Behar and those parts of Bengal with which I am familiar.

145. I have no remarks to make on Chapters XII and XIII.

146. *Chapter XIV.*—I think it would be a great mistake to deprive a landlord of the right of distraint, which is in accordance with custom and tradition. I do not, however, like the provision that distraint shall be only through the courts. The people are only too ready to go into court without being compelled to do so, and the bailiffs of the court will make a great profit out of both parties It seems quite enough if the tenant can appeal to the courts if anything illegal is done under colour of distraint, without putting power into the hands of the court bailiffs, who are a very depraved class.

C. E. G —Reg. No. 1414J—132—21-5-81.

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No. 155G, dated Bankoora Collectorate, the 3rd May 1881.

From—JAMES ANDERSON, Esq., Collector of Bankoora,

To—The Secretary to the Government of Bengal, Revenue Department.

WITH reference to your No. 574—235LR, dated the 1st March 1881, I have the honor herewith to submit my observations on draft Bill No. II on the substantive law of landlord and tenant, drawn up by Mr. Reynolds, in consequence of the views of those called on to report regarding the draft Bill of the Rent Commission.

2. I made certain suggestions with a view to improve the draft Bill of the Rent Commission in my previous report Of those made regarding the substantive law some have been given effect to in the present Bill. I have read the new draft, and consider it a great improvement on that of the Rent Commission. It does not deal with the procedure.

Whether it has still taken into due consideration the existing law, and tried to fit in the proposed state of things with it sufficiently, admits however of doubt, while new difficulties have been created along with the new matter introduced. Moreover, even it might with advantage be still further cut down.

3. In submitting the further suggestions I have to offer, I shall take *seriatim* the points noticed in the memorandum of Mr. Reynolds sent along with it.

4. *Section* 6, *Rent Bill*—Section 6 has been amended so as to compel ryots to keep their receipts as far back as 1839. Before discussing the principle involved in this amendment, it may at any rate be said that there ought to be a saving clause in favour of ryots who have before the coming into force of the proposed Bill acquired, under the existing law, the benefit of the presumption of 20 years, otherwise a sort of injury is done them, seeing that some might plead with justice that they did not see the good of keeping their receipts for more than 20 years, and had consequently destroyed them. If this would be admitted, then it will be a grievance if the year be fixed further back than 20 years from the passing of the Bill, say 1862. The presumption is a matter of procedure, and one which the ryot cannot *sud sponte* set in motion. He must be sued first. This the superior alone can do, otherwise a time might be allowed to all within which to obtain its benefit, after which it could not be claimed.

5. As regards the general question, Baboo Brojendra Koomar Seal, District Judge, and Mr. R. C. Dutt, Covenanted Deputy Collector, object to it, saying: "Considering the ryot's mode of living, the difficulty he experiences in preserving old documents must be admitted to be incomparably greater than that experienced by a zemindar. It was in view of this difficulty, we believe, that a presumption was created in favour of the ryot, when he could produce proof of possession at a fixed rent for the preceding 20 years. It would be impossible for the ryot to preserve documents for a longer time in his earthen pot or under his *tuktposh*, while it would be far easier for the zemindar to prove the contrary by producing documents from his old zemindari books. If the present modification were accepted, and ryots were required to produce from their insecure huts documents of forty-two years, more than half the ryots who now enjoy the right would probably fail to fulfil the condition, and would lose the right which they have enjoyed for generations. The difficulty will increase with time. A generation hence few ryots in Bengal will be able to produce documents of seventy years, and the important right of holding at fixed rates, which was bestowed on ryots by a benevolent Government, will gradually cease to exist. If then it is not contemplated to extinguish the right altogether, the modification now suggested by Mr. Reynolds must be withdrawn."

6. Baboo Anonda Nath Mozumdar, Moonsiff of Kotwipore, objects to it also, remarking: "The dakhilas, which are the mainstay of the tenants for the purpose of proving fixity of rent, are generally given on slips of paper of the worst kind, and preserved in receptacles which are not unoften the abodes of whiteants and mice. That documents drawn up on such papers and preserved in such fashion will withstand the ravages of time can hardly be expected." Instead of an ever-increasing period, he would retain a fixed one, but would extend it to thirty years. He says: "No doubt it has become now easier for tenants to raise the presumption than it was thirty years back, but that is no reason why a rule of law should be laid down which would virtually deprive them of its benefit. The period of twenty years may in fairness to both landlords and tenants be extended to thirty years, calculated from the date of the institution of a suit for enhancement backwards, and that is all the change which I think the altered circumstances of the present time require."

7. Baboos Akhoy Kumar Chatterjea, Sub-divisional Officer, and Parbutti Kumar Roy, Moonsiff of Bishenpore, similarly object to it, thus: "Since the passing of Act X of 1859 the twenty years' presumption has been considered as the settled law, which has lulled the people into the belief that the possession of the rent-receipts for twenty years immediately preceding would be a sufficient protection against enhancement. Acting under this belief, they have not taken care of the rent-receipts older than twenty years, and tenures have during the period passed into new hands by sale, &c., with twenty years' rent receipts as evidence of the title. It may not be out of place to observe here that original title-deeds with respect to old holdings are not forthcoming, and that the rent-receipts are in most cases the only evidence of title. It would be very hard upon the tenure holders if the

proposed change were carried out. The zemindars have all along preserved the documents to rebut the presumption, and 'they could have no reasonable complaint on this head if the law were kept unaltered." They further urge that the proposed change would hold out a premium to perjury and forgery. As the law of evidence stands, rent-receipts which are thirty years old prove themselves, and if the ryots were required to produce rent receipts from 1839 A.D., there would be very little obstacle in their way of forging rent-receipts for the period which immediately precedes thirty years with a view to take the benefit of the law; and the zemindar would be in the same position as if the change in the law in his favour had not been made."

8. In the amended Bill there is no mention of ryots holding at fixed rates being classed as tenureholders; but in section 16 the same presumption is applied to them also. Some tenureholders cultivate at least a portion of their lands, and many are poor. Therefore it seems to me that, on the whole, the period may fairly be extended from 20 to 30 years from the date of the institution of the enhancement suit, but should not be from any fixed date, as proposed in the amended Bill.

9. The provision that the presumption shall not hold good against auction-purchasers is objected to by the Moonsiff of Kotulpore. He says: "The wholesale repeal of the presumptive rule in the case of auction-purchasers would, I am afraid, lead to many nominal sales, and to a plentiful crop of litigation. If it is at all necessary to enact a rule of presumption for the benefit of tenants, I am not quite able to see why it should be made applicable to one set of cases, and inapplicable to another. A tenant's position under an auction-purchaser of the estate in which his tenure is situate is the same as that previously occupied by him under the old proprietor. It therefore seems to me unfair that he should lose a privilege which he enjoyed before, though the estate has not been sold for any fault of his."

10. The Sub-Divisional Officer and Moonsiff of Bishenpore write, in a similar strain: "It has been proposed that the presumption shall not operate against the auction-purchasers of estates. If such a rule were laid down, many unscrupulous landlords would cause their estates to be put up to sale and bought in in the names of their relatives with a view to take the benefit of the law in favour of auction-purchasers to the prejudice of the ryots, who have hitherto believed their properties to be secure under the law. The fallacy of the argument that estates are sold at low prices on account of the presumption will be apparent, if it is considered that the price of a zemindari is regulated by its present rental, and not by the supposed increase in its rental. The presumption has reference to the latter case only, and none but speculators would be affected by it. The persons who purchased estates for the purpose of speculation only, that is, for exacting more and more from the ryots through the machinery of law, might complain of the presumption, but they should not be encouraged by the Legislature to the injury of the ryots, who are the very backbone of the country. It is to be observed also that when no case has been strongly made out against the ryots, it is not equitable to legislate on the supposition that the ryots set up fraudulent defences against the just claims of the auction-purchasers. The amendment proposed does not, for the above reasons, commend itself to our judgment."

11. Undoubtedly, at the particular moment, when the two conflicting claims of auction-purchaser and tenureholder arise, the former is the weaker of the two parties, as against fraud. If this fraud could be stopped otherwise, then the proposal in question would be unnecessary. If not, still it can hardly be fairly contended that the interest of innocent tenureholders should be sacrificed in order that this end might be attained. Moreover, they have a more or less ancient connection with the subject-matter, whereas the auction-purchaser is a new comer, and the act of transfer has not been of their doing, whereas the auction-purchaser has brought it about either as agent of the superior, or as principal. If the former, the tenure-holder has suffered a legal wrong, and if the latter, surely the encouragement of free-trade in land cannot be pushed so far as to take away a legal benefit from all because some may abuse it. As a matter of practice at any rate, it is certain that superiors would sometimes be tempted to commit fraud by means of benami transfers, which are not easily exposed, in order to destroy the rights of *bonâ fide* subordinate tenure-holders, and therefore for this reason alone the proposal is highly objectionable.

12. *Section* 8.—The Moonsiff of Kotulpore approves of section 8 of the revised Bill, whereas the Sub-divisional Officer and Moonsif of Bishenpore approve of the section in the Rent Bill; but if this be not acceptable, they would, in the case of diluvion, allow the whole of the assets of the land lost as an abatement.

13. I approve of the principle of the revised Bill with the following proviso as regards diluvion. "Unless upon proof, the onus whereof shall lie on the tenure-holder or under-tenure-holder claiming abatement, that the diminution of area by diluvion or otherwise was of land of greater estimated value at the time of the settlement of the tenure or under-tenure where ascertainable than the rest of the land of such tenure or under-tenure, according to the basis on which the rent was then fixed, or if on no determinable basis, according to the basis of comparative fertility of soil, in which case the proportion shall be increased to that extent."

14. *Section* 9.—The Moonsiff of Kotulpore thinks that the maximum limit of profit to the tenure-holder on enhancement of his rent should be as in the Rent Bill, *viz.* 30 per cent., and not as in the draft Bill under report, *viz.* 20 per cent.

15. The Sub-divisional Officer and Moonsiff of Bishenpore think that the limit should be a minimum one, and fixed at 10 per cent.

16. I do not understand the policy of fixing an equitable limit, and then limiting the maximum of profit where no customary rate prevails. This seems to be an unnecessarily complex way of working, and presupposes a claim for all beyond that limit on the part of the superior as a constant quantity which is not accurate. Therefore it directly fosters such claims being made.

17. The natural way would seem to be to put a limit to the amount of enhancement directly, as is done in the rest of the Bill, there being no real limit the other way, except the will of the superior.

18. Should, however, it be desired to retain the limit of fair and equitable with a maximum limit in one direction as in the draft Bill, I would certainly recommend a limit in the other direction also being fixed. This could not be less than 10 per cent. after deducting costs of collection, and it is recommended by the officers above alluded to. I would join in their view on this point. The Moonsiff of Kotulpore prefers 30 to 20 per cent. as the limit of profit. I myself see no necessity for any limit in this direction. The question will always depend on the enhancements actually obtained by the tenure-holder himself as superior, and the limit of fair and equitable will always tend towards the minimum limit of 10 per cent. profit above suggested. Section 10 of the revised Bill is framed on the principle above suggested, and there seems to be no reason why section 9 should be framed on a different one.

19. *Section* 10.—The Moonsiff of Kotulpore thinks the enhancement need in no case be gradual in the case of tenure-holders. He says: "The causes which lead to the foundation of a claim for enhancement may operate slowly and gradually, but a tenure-holder will not be required to pay a higher rate of rent until those causes have ceased to work and the foundation of the claim has been laid."

20. There is no harm in the proviso to meet exceptional cases. The tendency of Courts is to make no exceptions, and therefore its application can hardly be abused.

21. The general views on the other two provisos of this section I have already given in my former report.

22. My own view thereon is that the limit of double the rent is unnecessary, politically speaking, in Bengal, and if so, can be defended on no other ground. It would be glaringly unjust if applied to town-holdings.

23. On the other hand the limit of once in ten years for enhancement is, politically speaking, sound, and should be maintained for all agricultural privileged tenures. If applied to ground rents in towns, however, it would likewise be indefensible.

24. *Section* 11.—I have already, in my previous report, given reasons against fixing an arbitrary limit in area as the criterion of distinction between a ryot and a tenure-holder, and I see that view has been generally taken elsewhere.

25. Accordingly, I would suggest that a distinction be searched for by a different path. It will be convenient here to discuss the definition of a ryot, and this will naturally lead on to that of an occupancy ryot. Nowhere under the old Act was this term defined. It means a cultivator in its essence. Under Act X, however, an occupancy ryot was allowed to be a holder of land also, and so the departure commenced whereby such a ryot might also be a middleman. Therefore a ryot holding at fixed rates might similarly be a middleman.

26. Now that a ryot is to be defined, it is proper to consider whether we should not have him fixed down to be substantially a cultivator. If we define either a ryot or a middleman exhaustively, we fix down both. In order to do this, it seems to me that it would be an extreme and impracticable definition to work on if we fixed him to be entirely a cultivator, and notoriously contrary to the customs of the country. It would likewise be contrary to custom were we to say that he shall always cultivate his holding, because from pilgrimages and other temporary causes of absence, from deaths and the like, the holding may be let temporarily. Therefore we must add the words "substantially" and "habitually" to the definition. Again, in order that "substantially" may be secured, we must say the major portion of the holding. There remains only therefore the custom of widowhood to consider. This may, I think, be disregarded, as it is reasonably within her power to cultivate by hired servants, or, if not, in bhag-jote, which terminates absolutely by custom in Bengal in one year, and therein differs from an ordinary yearly money-rent-paying ryot. The latter requires a reasonable notice to quit (article 50 of Field's Digest), and this by the cases must, if I remember correctly, be served at the end of the year, else he will hold on for another year. The "bhaoli" or "batai" tenant of Behar would equally require a reasonable notice to quit, and so would the equivalent tenant in Bengal, *viz.* the "shaja" or "ticca" ryot. The fact of the existence of such a tenure shews that it differs from the bhag-jotes The bhag-jotedar requires no notice to quit at the end of the year, and at any time thereafter a new person may be settled with, instead of him at the beginning of the following year without apprising him thereof; whereas a shaja ryot requires notice to quit at the end of the year, else he will be entitled to hold on for another year, just like an ordinary money-rent-paying ryot holding year by year.

27. The advantages of this proposal can be easily seen as regards fitting in with the existing state of things, and yet remaining elastic enough not to hamper the growth in extent of agricultural holdings. The limit is double what he actually cultivates, and bhag-jotes might be allowed after being expressly defined as above. The enormous holdings of Backergunge would thus be checked, and yet a reasonable safety valve for sub-letting given. I would therefore propose that we should define a ryot to be an actual cultivator habitually of the major portion of his holding, quoad that holding. It would

be immaterial whether he were a middleman of another holding, as it is not a question of absolute status like that of marriage, the nucleus of the status being the particular holding.

28. Now, applying this definition to the various classes of ryots according to the existing law, it is easy to see that a ryot holding at fixed rates may be indifferently classed as a tenure-holder or as a ryot, because the necessity of making such a distinction arises in regard to the question of enhancement of rent, many tenure-holders may be and are actual cultivators of a minor or major portion or even of the whole of the lands of their tenures. I would therefore at once class all ryots holding at fixed rates as tenure-holders with this proviso for their protection, that they must within a certain period register themselves against future auction-purchasers by a procedure to be provided in the Bill, or they must run the risk of having to prove that they were ryots holding at fixed rates before the passing thereof in any suit between them and the auction-purchaser of the superior estate.

29. Occupancy ryots under Act X would be allowed a certain period within which to accommodate themselves to the new definition of a ryot, and if they neglected this practice thereafter, then they would be liable to be classed as enhanceable tenure-holders, and to have their rents enhanced to the limit of such a class which, by the proposal and policy of both Bills, will have a higher maximum than that of an occupancy ryot, as well as to have them voidable by auction-purchasers, unless registered as above suggested. This would meet the cases of the occupancy ryots of Backergunge and other districts of Bengal with holdings of thousands of bigahs each.

30. All other ryots being by the present law almost equal to tenants-at-will, no fitting in of their case with the proposed definition is necessary. The definition of the term under-ryot becomes in this view, I think, unnecessary. The word "habitually" is used in the Penal Code, and therefore may, *ex majore vi*, well be left in the hands of the Civil Courts for determination. The remarks of the Famine Commission give strength to the above view. They write: "We conceive that it would not be difficult for the Rent Courts to investigate and decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupany right might be held to have passed to the person to whom the actual cultivation of the land has been transferred" (Paragraph 31, Chapter III, Part II, Report of the Indian Famine Commission Blue Book 1880).

31. *Sections* 19 *and* 20 —This brings me to the great clause of the Bill, *viz.* the proposal to give to every resident cultivator a security of tenure against arbitrary eviction so long as he pays the customary rate of rent of the pergunnah.

32. In my last report, after discussion, I found that it was not safe to confer a right of occupancy on three years' cultivators, and that even six years were short, considering the protracted nature of disputes regarding possession in this country, and on the whole I considered that for Bengal there was no sufficient ground for reducing the existing number of years, namely, twelve.

33. On the other hand I agreed with the policy of extending the incidents of the occupancy tenure by allowing acquisition and transfer against the will and without the consent respectively of the landlord, and by permitting mortgage and sale under any decree, and in short of making the tenure a valuable reserve of capital to the prudent and improving ryots.

34. Now we are asked to consider a new proposal, *viz.* to give an occupancy right to every settled ryot, and a settled ryot is defined to be any ryot holding or cultivating land whose fixed habitation is on the estate or within two miles of the land.

35. This definition certainly gets rid of the objection, that while the possession is still disputed the right may have meanwhile accrued to the successful disputant, because no doubt the term settled under the Bill would lead the Courts to infer that the possession must be no longer disturbed at the moment of acquisition of the right.

36. It, however, cannot be allowed to be prudent legislation to extend the incidents of the existing occupancy right and at the same time to reduce the period for acquisition to that of the merest squatter as regards the land in question It is hardly necessary, I think, to go into this point. The leading article of the *Englishman* of the 21st of April 1881 criticises it, I think justly, and pronounces its character as highly revolutionary.

37. I am very glad to see in section 38 of draft II that in all cases of transfer by private sale the landlord shall have the right of pre-emption Such a right exists in this country in regard to land under the Mahomedan law, and even in the statutory local law of landlord and tenant in part of British India, including therefore Hindoos also within its scope.

38. The still later proposal of Mr. Reynolds to give every resident ryot of an estate a right of occupancy at once in all the land held by him within that estate in which he has his fixed habitation would not only include what he has at the time of the passing of the Act, but whatever piece of land he might catch hold of or have previously absorbed without the knowledge and consent of the landlord, but with some subsequent single careless act of ratification and thereupon every bhag-jote-holder for the year only; and that would be extreme legislation, which would not give the landlord a fair period or opportunity within which to look after his rights. Besides, it would prevent any landlord from ever giving a poor

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resident ryot a single field in bhag-jote. Therefore this Bill would injure him. I would suggest that if there be not given to ryots in general the acquisition of the right of occupancy without power of the landlord to contract himself out of it, every resident ryot of an estate might be so favoured both for his holding and homestead land.

39. "A resident ryot of an estate is at the same time defined to be one who has had his fixed habitation in that estate for twelve years or more." This would leave a loophole for the zemindar to prevent the acquisition of the right of occupancy, as well as to destroy its value in the case of all ryots domiciled on the estate for less than twelve years, and one which would involve the unnecessarily severe result to the ryot himself in many cases of being turned out not only of lands but of his home also on he estate. A zemindar under the present law gets rid of a man from land which he does not wish him any longer to cultivate, but rarely goes further. Under this proposal he will be compelled to turn him out of his house and home also in order to save the particular land from becoming permanently held against his will by the particular undesirable ryot. Again, it is forgotten in all these discussions that a ryot may be a bad character, or that even a whole village or hamlet belonging to an estate may consist of such men. How is the good landlord to get rid of them?

40. 'A non-resident ryot should be left to acquire the right of occupancy after twelve years' is the corollary to the latest proposal to give the resident ryots of an estate a right of occupancy at once, for the old Regulations distinguish between the two. It is to be noted, however, that a ryot may become a resident ryot of an estate on the above proposal who does not cultivate, and has not for twelve years past cultivated, a single bigha in that estate, but has been all along and is a paikast ryot of a neighbouring estate. He then, although a paikast ryot of his own village or of the estate in which lies his fixed habitation, yet becomes an occupancy ryot of any land on that estate so soon as he begins to cultivate thereon. This would be an extreme temptation to him to get himself let into possession somehow, and would require amendment.

41. The result of the above analysis shows that each zemindar would be constantly, according to this latest proposal, stimulated to act against his own resident ryots, and to call in his neighbour's ryots for the cultivation of his own lands. Thus the lands round each village would tend to be cultivated only by paikast ryots. The race of resident ryots would dwindle while that of paikast ryots would multiply. The lands of each village would become its neighbours', and not its own, more and more; such legislation would have a most unnatural tendency. I regret very much that I am unable as yet to see a solution which would give effect to the very benevolent wish of Government, that the great mass of actual cultivators should at once be protected from arbitrary eviction by conferring on them a sort of occupancy right without creating two such rights, or without refusing extension of the incidents of the occupancy right. I would recommend at present, therefore, only an extension of the incidents of the occupancy right, a restriction of its retention to those who habitually cultivate the majority of their holdings, and the taking away from the landlord of his present power to frustrate the acquisition of the right. I venture to believe that the same result which the Government now desires to be reached at once will be gradually attained by some such course as I have indicated, in a more indirect manner indeed, but as surely in the course of twelve years, by which time also the ryots will be much better fitted owing to the spread of primary education to appreciate it, and with the additional benefits pointed out, which could not also now be safely bestowed broadcast by the legislature.

42. The District Judge and covenanted Deputy Collector say on the proposal of draft Bill No. II that they agree with the provision that every settled ryot shall have a right of occupancy who is a resident cultivator, and think it a great hardship, after a man has cleared the jungle and improved the land, that he should be liable to be turned out at the will of the landlord, noting that the compensation clause has been done away with.

43. The Moonsiff of Kotalpore objects to making residence instead of time the essence of "the status of an occupancy ryot." He says: "Since 1859 the element of time has been allowed to play an important part in the creation of the right of occupancy; I therefore do not quite see how, after more than 20 years, its introduction in the definition of occupancy right can be impugned as an innovation and anomaly. If the object of the author of the second Bill, in framing a new definition quite different in letter and spirit from that drafted by the Commission, is only to remove this anomaly, then I think there is no good ground for any alteration.

"Not only is the new definition not needed, but it is, in my opinion, defective in expression and revolutionary in its character. Every settled ryot has been allowed a right of occupancy in respect of the lands he holds or cultivates, and the expression 'settled ryot' has been explained to mean 'a ryot who has his fixed habitation in the village or estate in which he holds or cultivates land as a tenant, &c., &c.' Now, although in common parlance the term 'fixed habitation' is sufficiently clear, in legal phraseology it is rather vague and indefinite. Does it mean the place where a man dwells with his family, or the place where a man resides for the greater part of the year, or the place where he regularly, year after year, goes and settles for a time? Undefined as it is in its meaning, the expression is likely to lead to much litigation and misunderstanding between the landlord and the tenant. Not only will the parties to a suit explain it differently, but even the Courts of law will put upon it different interpretations. As upon the correct interpretation of this expression will depend the determination of the question as to whether

a ryot is a mere tenant-at will or a tenant with the statutory right to continue in the occupation of his holding, the expression ought to be as clear and unambiguous as possible.

"The definition is open to another objection of a graver character. It will create a serious disturbance all over Bengal. While it will raise the status of some ryots, it will lower that of many; while it will on the one hand all on a sudden transform mere tenants-at-will into ryots with right of occupancy, it will on the other reduce occupancy ryots of many years' standing into ryots with little or no rights, and thus revolutionize the whole peasantry. The moment the 18th section of the second Bill becomes law, a host of *khudkast* or resident cultivators who would otherwise have to wait for years to acquire the right of occupancy, will be in a position to claim it, but unfortunately for them such of the *paikust* or non-resident cultivators all over Bengal, as have under the existing law acquired the right of occupancy will be startled to find themselves deprived of this valuable right and reduced to the level of mere tenants-at-will. The section is most unfair and extremely hard upon ryots who have the misfortune to hold lands in villages situated at a distance of more than two miles from their homes It entirely overlooks their interests and destroys their most valued and cherished rights

"I do not see much virtue in the provision which makes residence within a certain limit a condition necessary for the acquisition of the right of occupancy. What reasonable claims have resident cultivators to be vested with this right, the moment they settle permanently in a village, and what have the non-resident cultivators done to forfeit that right, I am really at a loss to make out It seems to me hardly fair that the law should confer this valuable right upon one class of ryots (khudkast) as soon as they enter upon the possession of lands let out to them, and should not only deny the same to another (paikust) who may hold them for howsoever long a period, but take away the same from them even if they have been in enjoyment thereof for the last 30 years. For my part, I should like to see this invidious distinction removed. The new definition ought to be expunged from the Bill, and the old one restored"

44. The Sub-divisional Officer and Moonsiff of Bishenpore do not think the new presumption fair, as "contrary to the intention of the lessors and lessees, and to the discontent of the former." They still advocate, however, the unrestricted transferability of the occupancy right

45. As I have suggested that a ryot with the right of occupancy should be required; in order to retain it, to cultivate the major portion of it habitually himself, or by his servants or agents, the minority of such land alone will be liable to be sublet, and the question of rack renting this land dwindles into a matter of secondary importance However, it would never do, in my humble opinion, to limit the amount of rent of "under ryots" or the lowest class in the scale of tenants, as is proposed in section 30. There must be a safety-valve for getting as much out of the land as possible; and so long as the great body of cultivators are arranged to be admitted into the privileged class of occupancy ryots whose rate of rent is limited, those holding under them, subletting being allowed, but no right of occupancy to be thereby acquired, they must be permitted to choose freely, else they will lose, as regards the portion sublet, the main spring of improvement, for at present there is little or no scope in many parts of the country for selecting particular high-paying crops. Section 30 of Draft II should not therefore, in my opinion, be enacted.

46. Clause (*h*) of Explanation 4 of section 19 has been omitted, and in its place section 20 of draft Bill II has been substituted, *i.e*, a prohibition of effect being given to contracts, that the provision of right of occupancy shall not accrue. I am made to say in Mr. Reynolds' memorandum that I do not concur in this provision; but in my report I remark as follows: "My own view, therefore, would be that this right (*i.e.*, to acquire an occupancy tenure by possession for 12 years) shall begin to accrue in all cases, except where, from a certain date, (*i.e.*, *ante litem motam* or before the passing of the Bill), the ryot was let into possession by means of a written contract containing this reservation expressly." It is remarked by Mr. Reynolds that such a provision was made in the Irish Land Bill of 1870. He might now add in the Hare and Rabbits Bill of last session, and in the Agricultural Tenants Compensation Bill of Mr. Chaplin, which has passed a second reading this session in the House of Commons. Mr. Chaplin said, then, 'he would repeal those clauses of the Act of 1875, which gave power to landlords and tenants to "notice" themselves out of the Act' (vide *Times* of 24th March 1881).

47. The provision that an occupancy tenure shall not be saleable upon a mortgage bond is not only inconsistent with the idea of a mortgage, which is a conditional sale, but also will take away the capital with which the ryot would otherwise be able to improve his holding. The fear of some ryots becoming unthrifty cannot in Bengal, I think, become from frequency a political matter, and this provision will not, I think, protect the ryot against his unthrift in those cases where he is raising money for other purposes than the improvement of his holding, because he can make a usufructuary mortgage with possession for any length of time Where, however, he wants money for improvement, he cannot give possession, and therefore cannot get the money, because neither possession *ex hypothesi* nor sale *ex lege* are to follow

48. Clause (*e*) of section 20 has been amended, so that in case of a breach of contract causing injury which cannot justly be compensated in money, there may be ejectment. A reference to the court will be made in every other than the clearest cases, and thus litigation will be fostered. Moreover, the courts of justice themselves will be sadly troubled—

to say what "justly" means—in the many new cases which will be constantly springing up, partly in consequence of their own distinctions. I would suggest the word "reasonably" as preferable instead, and one to which the courts are already accustomed.

49. *Sections* 22 and 23.—The illustrations to section 22 of the draft Bill No. II shew that other classes of ryots than four, contemplated by the existing law (*vide* Field's Digest article 17) will be contemplated in the proposed law (*vide* illustrations (*a*) and (*b*) of ground (1). If they are to be so, it is not, I think, expedient to introduce them only in illustrations The courts decline to extend the scope of a law otherwise ascertained beyond the exact cases of the illustrations. Besides, how is the first ground of enhancement to be interpreted with regard to them? And how are rates to be tabulated for such classes according to explanation III of section 22 of draft Bill No. II?

50. It would be better to expressly enact the principle, that where boundaries are ascertainable and definite, then they, and not the area stated in a lease or conveyance, shall be the controlling part, than to find it only in an illustration (*c*) of ground (2). The other two illustrations (*d*) and (*e*) seem hardly necessary, and (*d*) would surprise planters who have taken jungle lands under the Waste Land Rules.

51. The addition of the words "or an interest not less than a life-interest" to section 22, Explanation I, will, it seems from the cases for Bengal, include a Hindoo widow, mother and daughter. The case of a Birbhoom ghatwal has been expressly considered, but as regards a Bankoora ghatwal his interest is admittedly less than a life-interest, because it may terminate on physical infirmity or misconduct.

52. I never heard of any difficulty in regard to the meaning of the word "landlord," and I do not find any necessity for limiting its meaning; so I fear fresh difficulties will be created thereby.

53. In Explanation II of section 22 of the Rent Bill, the rule of the High Court in the Great Rent Case is embodied. I thought it was found impracticable of application in many cases, as the rate prevailing at the time the former rate was fixed could not easily or always be ascertained.

54. In Explanation (*b*) of section 23 of draft Bill No. II the number of years for an average might well have remained, as apparently contemplated in the Rent Bill, within the control of the Board of Revenue, and not of the Court or Collector.

55. *Section* 25—The addition of the words "not otherwise" apparently excludes the case where on remeasurement, the number of bighas is found less than that stated in illustration (*c*) of ground (2) already alluded to—*i.e.*, where the rent is expressly calculated on the number of bighas and the boundaries are ascertainable and definite This exclusion would be productive of injustice in such cases Of course a greater number of bighas being found would require also, on the other hand, to be allowed as a ground of enhancement, but as this cannot be done, I fear the injustice is hardly remediable on the ground that the ryot is not so well acquainted with the outs and ins of measurement as the landlord. It might, however, be made an exception to the general principle alluded to in section 50.

56. The provisions of chapter IV have been omitted, but along with them has been omitted section 29, providing for compensation for improvements to ousted ryots. This point has engaged the attention of the Famine Commission (*vide* report part II, chapter IV, paragraph 7). The Commissioners state therein that a clause whereby every ejected tenant may obtain compensation for unexhausted improvements is in force in the North-West Provinces, and recommend distinct legal provision being made for it. They state that in Bengal and other provinces mentioned it does not appear to exist. Without such a clause it is clear that no tenant other than one having a permanent tenure would venture to make improvements. How far improvements should be allowed to be made by other tenants having a less interest is a fair question for discussion. It may, at any rate, be well considered whether an occupancy ryot should not when ousted be allowed compensation, at any rate, for improvements made with the written consent of the landlord, and it is clear that permanent tenure-holders should be allowed compensation in such a case, even when such improvements have been made without his consent. Some legislation on this point would therefore seem to be advisable.

57 I may here repeat that the limitation of enhancement of the rent of a ryot with a right of occupancy to double the former rent is not in Bengal politically required, and is not otherwise sound. This limitation, in the case of other ryots however, where the grounds of enhancement depend on the pleasure of the landlord, will become important or otherwise according as the above right will be conferred or not in the great mass of the cultivators as desired by the Bill. I would prefer to give no opinion on the point at present, except as already stated in section 45.

58. In my previous report I objected strongly to the extension of the right of occupancy to occupants of houses in towns and trading villages. I do so still, and see in the memo. a zemindar, Raja Pramotho Nath Roy, supporting a similar principle. I would suggest therefore that the word "ryot" be substituted for "tenant" in section 41, and that the provisions regarding enhancement and ejectment shall follow those of the general law, except that the maximum limit shall be five per cent. of the market value of the land; sections 41 and 42 become of vast importance should the proposal to make residence the essence instead of time of the right of occupancy of an agricultural holding. I do not see how in future a ryot is to be protected against eviction so long as he pays the rent, if the zemindar can put pressure on him as regards his homestead, because land cannot be cultivated unless a site for house and home be allowed, not on the holding which may be

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swamp, but in the village on high ground, unless the terms of acquisition of both be the same. The present proposal is a legislation for conferring a privilege at the moment of passing of the Act on the existing mass, but pays no attention how the privilege is to be preserved in future to the great body of cultivators. It is easy to see therefore the inherent defect of such a proposal, as it would be very extreme to propose that a man so soon as he settles down into undisturbed possession of a homestead shall acquire a right of occupancy therein. I would strongly recommend therefore (chapter VI) the principles of draft II on building lands for ryots to be amended as suggested above.

59. The District Judge and Covenanted Deputy Collector would have this right of occupancy on bastu lands to accrue retrospectively, and not "after the commencement of this Act." They say: "When Act X of 1859 was passed, retrospective effect was given to the famous section 6 of that Act with the most salutary results; and there is no reason therefore why retrospective effect should not be given to clause (*a*) of section 32 of the present Act."

60. The Moonsiff of Kotulpore approves of the amendments made to the chapter, and thinks they will remedy a great defect in the existing law.

61. The Sub-divisional Officer and Moonsiff of Bishenpore have nothing to say against this chapter.

62. *Sections* 43-45.—The Moonsiff of Kotulpore thinks the chapter on merger (VII) good. I have nothing to add to my previous report, except that I did not then remark, and may now do so, that it has been found convenient to hold a merger in abeyance in the case of Government. A difficulty arose under the old Cess Act (X B.C. of 1871) amended by Act IX (B.C.) of 1880 in the realization of Road and Public Works cesses due from the sirdars of ghatwali estates. The objection raised was, that they would not be held liable to the payment of the entire cesses levied on the ghat on account of both the holdings held by them, as well as those held by their tabedar ghatwals. The names of the latter were not down in the road cess touji, but their names were down as proprietors of the lands of each entire ghât. To get over this difficulty, it was at first proposed to open separate accounts with each of the tabedars, but as the opening of such accounts was a novelty, as it was held to be inexpedient having regard to the organization of ghatwals, and as it would entail much unnecessary labour, the Commissioner of the division objected to it. This difficulty was then got over by the application of the Public Demands Act (VII B. C. of 1880) in the manner noted below.

It was found that the sirdars of ghatwali estates get profit out of the punchak they collect from the tabodar, and are therefore not mere collecting agents. They were therefore considered according to their agreements as ijardars. Whether Government be viewed as zemindar or the sirdar ghatwals, the cess might be realized by filing certificates against the sirdars, under the Public Demands Act. If the sirdar ghatwal be considered as the zemindar, then of course he is liable for the whole cess of the ghât; if the Government, then, as by section 25 of the old Road Cess Act, zemindars may recover road and public works cesses in the same manner as they would realize arrears of rent, Government may realize in the same manner, but by clause 6, section 7 of thePublic Demands Act, Government can realize an arrear of rent by means of that Act, therefore Government can file a certificate against the sirdars for road and public works cesses. Had the proposed section of the Rent Bill (section 45) or of draft Bill No. II (section 36) been the law, then there would have been a merger of the two titles, *viz.* as zemindar and as the paramount power, and the above procedure could not have been adopted. This of course is a very peculiar case, still I have little doubt that it will often be found convenient in future to make use of the powers conferred by law on zemindars or holders of other interests in land, and although the non-merger would entail the corresponding liabilities of zemindars which would be inconvenient in many cases, it might be considered advisable to allow of a reasonable time elapsing in future within which Government, like others, might avoid a merger by an express declaration to that effect, with the addition of "for such period as it might deem expedient."

63. The District Judge and Covenanted Deputy Collector still hold that the registration of sales, &c., of tenures should be taken away from the landlord's sherista and placed in the registration offices. They say: "The opinion which we then held we maintain still. In our opinion any attempt to register sales and transfers in the zemindar's sherista is certain to result in failure. It would also tend to deprive the ryots to some extent of that right of free transfer which they already possess for all practical purposes all over Bengal, and which it is now generously intended to formally bestow on them by law.

"Mr. Reynolds says that it would be 'quite impracticable' for Government to undertake registration of such transfers even in the Registration Department. We certainly do not see why it should be so. Such transfers are not so frequent as to be likely to swamp our sub-registrars with impossible work; and even if they were so, it would only be necessary to appoint new sub-registrars, who would be more than amply remunerated by the fees paid for such registration. Government has always desired to multiply sub-registrars as much as possible. Extension of registration work not only brings in an increasing profit to Government, but also adds to the convenience of the people; and if the new work of registering ryoti transfers necessitated the doubling of the number of our sub-registrars, it would only result in so much increase in the convenience of the people and profit to the Government.

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"On the other hand the cultivators would rejoice in being able to register such documents before the sub-registrar and not before the zemindar's gomasta, who is often an official of questionable honesty and on a pay of Rs. 3 to 5 a month. If the right of free-transfer is bestowed on the cultivators at all, let it be bestowed freely, and not be made dependent on the will and honesty of the zemindar's gomasta. To recognize a right under such conditions would not only increase fraud and litigation, but would indeed be a mockery.

"The same rules that we have suggested for registration of sales should also be observed in cases of successions. We would add a clause that when a sale or a succession is not registered, the zemindar shall nevertheless be estopped from objection to it if he has entered it in his sherista, if he has any, or has otherwise recognized it by his own action—for example, by receiving rent from the new comer. Such a provision is necessary for the security of those poor cultivators who may not be able to have transfers registered, but who should nevertheless be protected after the zemindar has once consented to the transactions"

64. The Moonsiff of Kotulpore thinks the amended Bill is good on the registration of transfer of tenures and occupancy holdings

65. The Moonsiff and Sub-divisional Officer of Bishenpore remark as follows on these sections: "The power of attachment given to the landlord under sections 42 and 43 is sure to be abused, and it is not desirable that the landlord should be armed with such powers. We would propose therefore that after the expiry of the term the landlord shall, instead of attaching the tenure, issue a notice through the court, and proceed in the manner provided for in the latter part of section 43.

"The provisions of the other section of this chapter meet our unqualified approval."

66. I have little to add to my previous report regarding the registration of transfers of tenures and occupancy holdings in registration offices, because I have not been favoured with the reasons which have weighed with Mr Reynolds in pronouncing such a proposal to be impracticable. The District Judge and Covenanted Deputy Collector discussed this point, and I venture to ask *per contra* how the proposal of the Bill can be considered as a practicable one. Experience points, I think, otherwise, as well as the consideration that tenure-holders are often petty and illiterate and can, therefore, keep no sherista wherein to register such transfers. A notice with a period attached, served through the Collector as at present practised by registration offices, would enable the landlord to exercise the right of pre-emption given him by section 38 of draft Bill No. II.

67. The fee of two per cent. in section 39 draft Bill No. II is a good provision, and will meet the objections which were raised in my last report against extortionate and excessive demands on the part of the landlord for registration.

68. Section 40, clause (*a*), would then require slight amendment. Clause (*c*) would, according to my view of extending the incidents of a right of occupancy so as to include sale in execution of any decree, then include an occupancy holding as well as a tenure or under-tenure. The notice in that clause cannot always easily be given by the transferree, as he may go off to Cachar, Mauritius, &c, and the landlord suffer. Why should not the burden be thrown on the transferree under a continuing penalty to the landlord? He gets the possession, and the party in actual possession is the one the landlord can more securely look to for enforcing his claim.

69. Section 46 of draft Bill No. II provides for the furtherance of registration in the landlord's sherista, a system of control by the Board of Revenue. I fear this scheme will not work, first, because there is no tribunal prescribed for punishment of disobedience, except impliedly the Civil Court, and no agency capable of supervising so many sheristas in each district. The second clause prescribing acceptance of rent as equivalent to registration might perhaps be made general, leaving the zemindar to sue for the fee and penalty prescribed.

70. I do not look on the provision of requiring substantial security from the transferree as anything but an engine of oppression in the hands of many landlords (section 45), and would simplify the procedure as much as possible It is clear that if a man pays a large sum of money for a tenure, no security is necessary. Besides, there is always the tenure itself to fall back upon. What is the security of half a year's rent? Very little; whereas the opportunity given thereby for harassment is very tempting, and consequently the danger of such a serious consequence great It is well known that keen criminal courts are sometimes tempted into taking excessive security from prisoners. These can be controlled, but there is no means of controlling the zemindar, except by an expensive litigation by the transferree at a time when his little capital, in the case of purchase, has been exhausted therewith.

71. *Sections 55 and 56.*—The four instalments proposed for payment of rent in the absence of custom or agreement might more conveniently be made due on say the fifteenth day before the last day of payment of each of the four revenue kists, and bear the same proportion to the yearly rent as such revenue kists bear to the sudder jumma in the case of revenue-paying estates, and in the case of revenue-free estates to one fourth of the annual rent. This saves all the expense to the parties of going to the Collector, getting a local enquiry and the like. Many abstract advantages are cheaply sacrificed for the sake of avoiding falling into the hands of Courts and investigating officers.

72. *Section 57.*—Regarding receipts for rent, the penalty proposed to be imposed on account of a receipt defective in any of the particulars specified in section 49 draft II, viz. the treating such as an acquittance in full up to date, is far too severe, especially in the

case of illiterate men. Were printing universally diffused, it might be possible for Government or shopkeepers to sell such forms Even Government can with the greatest difficulty get its country spirit vendors to keep accounts in printed forms sold by itself; but still there are many cases, as in backward tracts, where no punishment is readily inflicted for want of them. So in the cases of receipts, there will be many poor illiterate and backward communities where an infliction of the penalty would shock their sense of justice so much as to bring about a defeat of the law by common consent The most that the legislature should, I think, sanction would be the infliction of a small penalty on the tenant tendering it prior to admissibility in evidence of such receipts in gross cases of neglect of the above particulars according to the discretion of the Court, and in the case of the landlord in suit of the penalty prescribed by section 94 draft Bill No. II, prior to his being allowed to proceed with his case to a decree or after appearance of the ryot defendant.

73. I should like to see an attempt made to remedy the following grievance of a poor ryot. He tenders rent for the arrear he admits, and it is absorbed, without informing him, for some arrear of which he is ignorant or disputes. The landlord should be compelled either to apply the money to the period which the ryot admits, or where neither agrees, to the current year's arrear, in which case the landlord must sue within say six months for all arrears before that.

74. *Sections* 58 *to* 61.—On the subject of deposit of rent, the Moonsiff of Kotulpore remarks: "The provisions of the chapter on coparceners, though fair in themselves, are yet uncalled for. The evils of coparcenership have not gone such lengths as to require legislative interference for their cure. Instances of bad management and of dissensions among co-sharers may now and then be heard, but considering the extent to which coparcenership prevails in this country, it will indeed be generally admitted that such instances are comparatively rare. Dissensions and disputes there will be, notwithstanding these provisions, and party spirit will continue to rage whether measures are devised for their check or not. Ryots will side with this sharer or that, according as their interests will dictate and inclinations lead, and such will ever be the case whether they pay rent to a general manager or to the several co-sharers separately. I cannot therefore say that the provisions on the subject will be very successful.

"I am not quite able to endorse the view that though it may never be found necessary to take action under these provisions, their existence in the Statute Book is calculated to prevent the evils which they are designed to cure. Those who now patiently bear certain petty inconveniences will, in my opinion, be rather led to magnify them in their minds into gross injuries and eventually tempted to move the authorities for a redress of their wrongs. Any dissatisfied sharer of an estate or taluq will find in these provisions a simple and easy method of avenging himself upon his co-sharers, and so will the tenants find it easy to reduce their landlords to mere annuitants, a great fall no doubt for the landlords. Upon petty landlords specially, the machinery provided by the Bill will be an infliction. It will press hardly by increasing their cost of collections, and thus decreasing their net profits I would therefore suggest that the chapter on co parceners may be omitted altogether." As this chapter was discussed at some length in my previous report, I will add no more, except that, as non-official opinion appears to be decidedly against it, it might well be omitted.

75. *Section* 71.—This section seems useless, and therefore injurious, as it admittedly reproduces the existing law merely. It will be criticised, and some new law will be derived somehow from it. Its terms even are not apparently exhaustive, for instance, in the first clause is omitted a declaration that proprietors of land, which was before the time of the permanent settlement held by tenure-holders, &c., are competent to grant leases thereof. Further, the same clause, according to grammatical construction, would declare not only proprietors of land which being held at the time of the permanent settlement by tenure-holders, &c, has since come into their khas possession, to be competent to grant leases, but also proprietors of land which was not at the time of the permanent settlement held by tenure-holders, &c, even although apparently such land has not since that time come into their khas possession. Why mention the condition of the land having come into their possession in the one case, it may thus be said, and not in the other?

76. *Section* 75.—No limit to the number of times a landlord may measure his lands is fixed. Perhaps this is necessary, in order to meet cases of alluvion and diluvion. Barring on such grounds, however, a limit might be fixed similar to the case of enhancement, and confined to such, *viz* once in ten years after every enhancement made by a landlord as regards enhanceable tenures and occupancy holdings only. Measurements are very irritating to peasants liable in consequence thereof to enhancement of rent, and it would be politic to prevent this by a saving clause as above indicated in their interests.

77. In section 68, clause (*b*), an appeal is allowed from the Collector's decision, on the length of the standard pole, to the Judge. This is, I submit, is not politic. It would suffice, I think, if the District Judge were empowered to call upon the Collector to report the length, if any, in any particular pergunnah according to his records, and to make such length binding in all cases on the Judge. If the report be that there is no such undoubted standard pole according to the records, then the Judge shall decide for the purpose of each particular case on the evidence tendered by the parties, until the Collector can make a clear report, or the matter become settled by the flow of decisions. Either there is or there is not such a standard pole for any particular pergunnah for all cases at any given period. The litigation would be continual under the scheme of the Bill, whereas, according to the above proposal, the

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report of the Collector would act like a judgment *in re*, but elastic enough to admit of adaptation at any time to the state of the whole of his records for the time being. If it be considered advisable, there might be an appeal from such report to the higher revenue authorities, and notice given to the Judge to await the final result. If the Chemical Examiner can be allowed to give a report on a matter appertaining to his department in a criminal case without examination on oath, surely in a civil matter like this the Collector might be allowed a similar privilege, at any rate under the safeguard abovementioned.

78. *Section* 77.—I have little now to say, clause (*b*) having been omitted, and the Moonsiff of Kotulpore is also satisfied. Improvements may be made without the consent of the landlord both by the Rent Bill (sections 77 (*a*) and 29, and by draft Bill No. II (section 69) by any ryot. Thus, even a bhag-jotedar for one year may injure the land in the view of the landlord. I have already in my report drawn attention to this power as too wide, and would recommend its being confined to occupancy or settled ryots and to tenure-holders. Of course, any expensive alterations any ryot is not likely to make, but he may still do something which he considers an improvement which may in the eyes of the landlord be very injurious, *e g.* altering the course of a stream.

79. *Section* 70 of draft Bill No II must be considered with reference to my remarks on the definition of ryot, and on the occupancy right in this report. According to my proposal on these points, it would be unnecessary, and as it stands, it would be objectionable, as contrary to the existing practice.

80. *Section* 78 —The proposal to omit this section seems right on the whole, but there is an undoubted difficulty on the part of the ryot in ascertaining his true landlord in the case of a transfer, unless the date of such transfer be communicated to him somehow. This might be done by beat of drum where there are more than ten tenants, or the lands are situated in more than one survey mouzah in at least one village, if any, of each such mouzah.

81. *Section* 79.—The Moonsiff of Kotulpore suggests a limit of three months being expressly fixed in clause (1) within which the landlord must, if he desire it, object to the ryots holding over "in order to put a stop to all disputes regarding its proper interpretation." Clause (4) regarding absence from the neighbourhood being sufficient reason for re-entry by the landlord, I think might have in addition—"under such circumstances, as to induce the landlord, acting with due care and caution to believe that the ryot has relinquished the land" Clauses (8) and (9) seem to be good.

82. *Section* 80.—I have nothing to add to my previous report on the point of retaining a ryot on the ground after ejectment in execution of a decree, except that I see the section has been in operation in the North-West since 1873, and the experience derived therefrom may well be accepted as conclusive regarding its value.

83. *Sections* 81 *to* 86.—I refrain from making remarks on the special provisions for Behar, except to say that some sections, if considered good for Behar (*i.e* sections 84 and 85), would seem to be equally good for Bengal. Also the Moonsiff of Kotulpore remarks:

"The only suggestion I would make in connection with these special provisions is that commutation of *bhaoli* rents ought to be discouraged as much as possible. If the peasantry all over India are not so prosperous as they were a century and-a-half ago, it is, as some learned gentleman remarked, mainly due to the 'hasty substitution of cash assessments for payment in kind,' and it is owing to this cause that famines are now more frequent and the people are more powerless to prevent the development of scarcity into starvation, than they were before. The rigid exaction of cash payments at constantly recurring intervals is also unsuited to their condition and circumstances. Poor as they are, and dependent entirely on the produce of the soil, the landlord ought not be inexorable in his demands upon them for rent, but should show some consideration to them at bad times."

84 *Chapter XIII* —As the Bill on damages and penalties appears not to be intended to modify the present law, and as draft Bill No. II has made only one confessedly immaterial alteration thereof, no remarks seem necessary.

85. The litigation referred to in section 100 of draft Bill No. II, which is to be excluded in calculating the limitation arising from the establishment of the relationship of landlord and tenant between two parties, by such litigation, should, I think, be described as "*bonâ fide* and diligent."

86. The Sub-divisional Officer and Moonsiff of Bishenpore object to any law of distraint. They remark: "As a rule, landlords distrain the crops of their ryots more with a view to harass them than to recover their just dues, which they do in execution of their rent decree. They have recourse to this procedure also in cases when their title as landlords is disputed. There can be no doubt that the power of distraint has been abused under the present law, and it is not desirable that such a power should be exercised at all. It is true that the injured party has a remedy in the Civil Court, but in many cases where the landlords are too powerful to cope with, the ryots are forced to submit tamely to the outrages committed by the former. The draft Bill proposes that the landlords shall not take the initial steps on their own responsibility, but shall have to apply to the Court for taking out processes of distraint. The applications are to be made *ex parte*, and they would not act as safeguards against the evils complained of. The evils attending on this procedure outweigh its concomitant advantages, therefore it would be better to remove it from the Statute Book."

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87. The Moonsiff of Kotulpore criticises the law, and would prefer the existing law; but if the proposed change be considered necessary, would suggest that "previous notice upon the ryot be made a condition precedent to the filing of the verified application for recovery of arrears due from him." His remarks are as follows: The scheme propounded in draft Bill No. II for the realization of rents of the current year is, no doubt, simple and calculated to afford great facilities to landlords. But at the same time we cannot shut our eyes to the fact that it is only one degree less hard than the procedure sanctioned by the Putni Regulation. All that the zemindar will have to do under the new system is to file a verified application and to adduce *primâ facie* proof in support of it and forthwith a process authorizing the attachment of the tenant's crops will issue. The fruits of the tenant's whole year's labours, his hopes of sustenance, and, in short, the best part of his wealth, will then be in imminent danger of being sold and transferred to another's possession, unless he would be prompt in paying the full amount of the claim with the costs of the distraint. Such a procedure will on the whole prove beneficial to the landlord, but I doubt very much whether it would in any way improve the tenant's position. As the landlord will generally proceed to distrain the ryot's crops before they would be reaped, gathered, and stored, the ryot, who lives a hand to mouth existence, will be compelled to borrow money from the money lenders at usurious rates of interest in order to satisfy the landlord's demands. Having once got over the difficulty by means of a loan, he will probably not care to clear off the debt for the next twelve months. Each succeeding harvest season will probably add to the burden of his debts, and at last he will find himself so involved, that nothing but the sale of his holding will extricate him from the pecuniary difficulties which are partly his own creation and partly brought on by the law of the land.

"I cannot consider the modified system of distraint introduced into the second Bill as a great improvement upon the provisions of the existing law on the same subject. The *primâ facie* proof required from the landlord will, in my opinion, hardly afford a sufficient safeguard against groundless claims. The inevitable Gomasta of the person entitled to receive the rent will always be ready to swear to the arrears. He will never hesitate to pledge his oath in a matter in which his master's interests will be at stake. Tehsil papers for a year or two will also not be wanting to induce the Courts to believe in the goodness of the claims Unopposed and unresisted, the landlord will gain his point, and the Courts will be powerless to deny him the relief he would seek.

"The fear of the liability to pay damages will not always be successful in deterring unscrupulous landlords from distraining their ryot's crops for nominal arrears. Regardless of the consequences and confident in their power to procure false evidence, they will sometimes find it convenient to resort to the procedure now laid down, and to cause the ryot's crops to be attached and brought to sale, if only to satisfy their private grudge, or to cause some injury to the poor cultivators.

"The fact that whatever the landlord will get under the new scheme will be given him by the law, will afford him facilities for doing wrong. Under the cloak of law he will be encouraged to commit acts which he would not otherwise venture to do.

"Thus, although on the whole the provisions may work well, cases of great injustice and involving considerable hardships on the ryots will some times occur; and as it is desirable that the rights of innocent helpless men should not be heartlessly sacrificed to the convenience of the landed aristrocracy and other landholders of inferior rank, I hope Government will not introduce a change into the existing law without due deliberation

"The procedure laid down in the present law, though a little cumbrous and dilatory, is very fair and equitable. The little delay it involves is after all necessary for the ends of justice. Justice, and not expedition, should be the motto of the legislature."

88. *Chapter XIV, Draft Bill No. II.*—This chapter provides that certain crops may be distrained at a stage when they could not be under the existing law; that they shall, however, be only distrainable through the court, and that the procedure of the court shall be *ex parte*. As regards the first change, which is one of substantive law, no reason is assigned for extending the right of the landlord to distraint of the crop on the ground or threshing-floor, to the granary in the house or yard of the cultivator's homestead. The only reason which is apparent is that the act will now be done under the authority of the Court by one of its own officers. Any other reason would be one of policy.

89. There is, of course, no theoretical reason why the crop should not be followed so long as it is in the cultivator's possession. I think, however, there are practical reasons against this extension of the landlord's right. First of all, the crops of different holdings might be mixed up, as the "morais" or granaries are often of large size. Again, the landlord could not easily pick out his own crop from among the different morais even if they had been kept separate, as there would be no evidence probably available on the point, seeing that these are often inside the house or yard frequented by the females of the family. Then, the entry into the house without previous notice, and perhaps with a consciousness of the non-existence of any arrear for the current year, would be most irritating to the ryot, especially if the landlord was known to be desirous of coming down on him; and if that ryot were an old ryot who had gained position, the insult to the family might absolutely cause a breach of the peace, and place the man, whose independence and status Government desire to raise, at the mercy of an oppressive, unscrupulous opponent, whose hostility has been contracted solely perhaps by success in a life of rectitude and industry, and by deservedly acquired influence in the village The house-entry of a couple of servants, one of the landlord and the other of the Court, but perhaps made also a servant

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of his for the occasion, might be made at an inconvenient time, or even at night, as far as appears from draft Bill No. II.

90. It is not long since here such a night-entry in execution of a decree took place with the result of resistance; a complaint of dacoity, a counter-complaint of resistance to authority, and so on. Still more recently a reputedly strong zemindar tried to beat down a ryot with a view to enhancement no doubt, and having swamped him with suits—the man said 200—converted a kuchari dispute between the parties into a dacoity in order to ruin him. The ryot was convicted of rioting, the major charge having been dropped from the first, and but for his release on appeal, would have been crushed. The proposed law would, in the hands of such a landlord, soon dispose of such a valuable ryot.

91. The history of the law of distraint is one of clipping its wings. Why extend it again? There is no mischief to remedy, as far as I know. The landlord knows the reaping time, and can then distrain. By the proposed change he can distrain throughout the year, as he cannot possibly know when the particular grain of the particular holding leaves the possession of the cultivator in many cases. I beg, therefore, to recommend the omission of the change in the existing substantive law.

92. It is surely time to distinguish the classes of cultivators and to exempt ryots holding at fixed rates, and all tenure-holders, from such a law altogether. I would also recommend occupancy-ryots being exempted, especially now that their tenures are to become a valuable security to the landlord for all arrears by a priority of claim over all other creditors. There remain, therefore, only the unprivileged, and therefore more uncertain cultivators to deal with. For them a case may well be made out of conferring a power of distraint on the landlord, subject to sufficient checks.

93. That the distraint shall be only through the Court is a decided step in advance; and if distraint remain at all, such a provision should be retained at all hazards. The very minions of the Courts will, it is hoped and believed, become more and more respectable representatives of justice every day.

94. That the procedure shall be *ex parte* without security for at least the amount claimed with costs being tendered by the applicant and accepted by the Court before issue of the process of attachment, I cannot bring myself to advise * Those who are in practice in mofussil Courts know the extent to which sufficient oral and documentary evidence may be found when required, so long as the only party who can meet it is absent; I cannot therefore wonder at the Moonsiff of Kotulpore desiring that the *ex parte* victim in the first step of the contest, which is everything if he be poor and his opponent rich, should be assured of getting notice of any possible plot against his property and the sanctity of his hearth. What Madame Roland said when at the mercy of her all-powerful adversary, the busy ryot may exclaim, using the name of British justice instead. If the landlord were not allowed to choose his time, there are seasons when even a comparatively poor ryot could resist oppressive measures; but when the busy time of harvest, with exhausted stores and credit, is chosen, then he may well be driven to the feet of an unscrupulous landlord, and enhancement triumph by a side-wind under colour of a current arrear. The details of the procedure I think it unnecessary to discuss, as Mr. Reynolds waits the reports of the Judicial Branch before formulating it finally. I therefore close this report by begging a reference to my previous report, if desirable on this matter.

* It may be, and is sometimes, used not only against tenants by a landlord, but also against any one ryot either of whom has contracted his hostility or whose land (it may be adjacent to his own), he is desirous of possessing for the purpose of securing a title by the aid of an attornment.

R. M. & W. Y.—Reg. No. 1219J—132—14-5-81.

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No. 62M, dated Dacca, the 4th May 1881.

From—F. H. PELLEW, Esq., Offg. Commissioner of the Dacca Division,
To—The Secretary to the Government of Bengal, Revenue Department.

WITH reference to your letter No. 574-235LR, dated 1st March last, I have the honour to offer the following remarks on the revised Rent Bill. I have not attempted to discuss the points treated in the memorandum, but have simply gone through the draft Bill and made such remarks as occurred to me.

Section 18.—As requested in Mr. Reynolds' demi-official letter of the 14th ultimo, I have already forwarded my views on this section and the modification it requires.

Section 20 (*a*).—I think the ryot's right of occupancy should be made saleable absolutely, but the matter has been so fully discussed that I shall not enlarge on it

Section 34, *clause* (*B*), *Proviso*.—There will be so many of these merger cases in Backergunge that I think a longer period should be given; not that I wish the present system to continue, but the merger of tenures would be on such a large scale that it would affect the value of landed property there. The system under which landlords acquire and retain tenures for increasing their power and influence in an estate is of long standing in Backergunge. There is at present in that district no custom of merger at all.

Section 41.—I think in this case twice the amount would be sufficient, instead of ten times.

Section 49 (*d*).—This is a very excellent provision, and will, I believe, effect what has hitherto been by many thought impossible—the granting of proper receipts to ryots for rent paid. It will not be really hard on zemindars, for though accounts of old arrears with interest are scrupulously kept, it is seldom or never that any attempt is made to realize them. They are kept *in terrorem*, and it is often overlooked that 19-20ths of the amounts shown are barred by limitation.

Section 51 (*B*).—I was inclined to think that a one-anna fee would be sufficient, as there are a good many expenses incidental to the process; but I see from the memorandum, page 15, that this fee will cover the expenses of the notice. I have no further objection to it. It is clearly right that the ryot should pay for the notice.

Section 51 (*c*).—I would insert "purport to" after the words "the rent deposited shall" because how can the officer in charge of the treasury tell whether this condition has been complied with or no? He would apparently have to refuse all deposits pending enquiries into the full amount due (*see* section 52).

Section 101.—What is a cultivator? Is he the same as a ryot? A ryot is defined, so is a tenure-holder, but not a tenant or cultivator.

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Dated Gya, the 9th May 1881.

From—M. Finucane, Esq., Covenanted Deputy Collector of Gya,

To—The Secretary to the Government of Bengal.

With reference to your No 571—2351R, dated 1st March 1881, I have the honor to forward herewith my report on the draft Bill forwarded therewith.

Enhancement of Rents in Behar.

I have urged more than once that the question whether the ryot shall or shall not be entitled to hold his land as long as he pays the rent for it is not the question of immediate pressing importance to Behar ryots. The question of practical import to them is whether such limitations shall be placed on the amount of rent which they shall have to pay as will leave them something worth holding. The rent rates at present paid by occupancy and non-occupancy ryots in the same village for the same description of land are, as a rule, in Behar exactly the same. The rates are in both cases as high as could be obtained if the land were put up to public auction. They are imposed by the will of the zemindar or thikadar. Contract, custom, and equity have had very little to do in determining their amount, and they are, as a rule, rack-rents Mr. Reynolds' note shows conclusively that, acre for acre, land is at present much more highly assessed in Behar districts, remote though they are, and difficult of access as they have been till very recently, than it is in Bengal with its superior facilities for communication and proximity to the great trade centres.

The question may, however, be looked at from another point of view. The relative progression of enhancements in Behar, as compared with Bengal, may be considered. In order to ascertain how much more rapidly rents have been enhanced in Behar than they have been in Bengal during the past ninety years, we have only to look to the present rent assessments in both Provinces as compared with what they were at the time of the Permanent Settlement. There is no evidence available to show exactly what the gross rental of districts was at the time of the Permanent Settlement, but there is the authority of Sir John Shore (Appendix I to Fifth Report, paragraph 109, page 120, Madras Edition) for saying that, at a very liberal calculation, the gross rentals payable by the ryots to zemindars at the time of the Permanent Settlement did not exceed the amounts paid by the latter to Government in a greater ratio than three to two.

If then we add 50 per cent to the Government revenue of the districts of the Patna Division, we get approximately the gross rentals of these districts at the time of the Permanent Settlement. We can, in the same manner, ascertain the gross rentals at the time of the Permanent Settlement of seven typical Bengal districts. The present gross rentals we know approximately from the road cess papers.

We are thus in a position to ascertain the ratio between the present gross rentals of Behar districts and their gross rentals at the time of the Permanent Settlement. Similarly, we can ascertain the ratio of the present gross rentals of Bengal districts to their gross rentals at the time of the Permanent Settlement, and thus we shall be able to see to what an enormous degree rents have been enhanced in Behar since the Permanent Settlement as compared with Bengal. Applying this method the figures will stand thus:—

I.

Patna Division.

Behar Circle.	Road Cess valuation or present rental.	Government revenue.	Add 50 per cent.	Approximate rental at time of Permanent Settlement.	How many times present rental exceeds rental at time of Permanent Settlement.	Remarks.
	Rs	Rs.	Rs	Rs.		
Patna	57,90,154	14,55 131	7,27,565	21,82,696	2 6	
Gya	70,52 648	13 72,514	5,86,257	20 58 771	3 4	
Shahabad	56,65,898	17,42,665	8,71,333	26,13 997	2 1	
Mozufferpore	51,60,551	8,79,458	4,39,729	13,19,187	3 9	
Durbhunga	55,82,225	7,71,4'6	3 85,708	11,57,124	4 8	
Sarun	55 44 273	12,25,706	6,12,853	18,38,559	3 0	
Chumparun ..	26,69,727	5,10 145	2,55,072	7,65,217	3 4	

II.

Corresponding figures for seven Bengal Districts.

Bengal Circle.	Road Cess valuation or present rental	Government revenue.	Add 50 per cent.	Approximate rental at time of Permanent Settlement.	How many times present rental exceeds rental at time of Permanent Settlement.	Remarks.
	Rs.	Rs.	Rs	Rs.		
Burdwan	58,42,998	25,47,664	12,73,832	38,21,496	1·5	
Midnapore	60,52,499	23,55,973	11,77,986	35,33,959	1 7	
Hooghly	43,20 618	18,34,904	9,17,452	27,52,356	1 5	
24-Pergunnahs	42 52,123	15,14,086	7,57,043	22,71,129	1 8	
Nuddea	27,83,458	10,20,135	5,10,067	15,30,202	1 8	
Moorshedabad	32,44,241	13 09,298	6,54,649	19,63,947	1 6	
Dinagepore	30,95,670	16,64,625	8,32,312	24,96,937	1 2	

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These figures show that while rents have been increased only from 20 to 80 per cent. since the Permanent Settlement in Burdwan, Hooghly, and Moorshedabad and Dinagepore, they have been increased 260 per cent. in Patna in the same period, and no less than 480 in Durbhunga, which in this respect heads all the districts of Behar; but if it is remembered moreover that the zemindar's profits or net income was represented by one tenth of the Government revenue at the time of the Permanent Settlement, it will be seen that while the surplus now realized from the ryots by a zemindar of Burdwan over his Government revenue is only five times, and that of a Dinagepore zemindar is only twice, the net income enjoyed by his predecessor at the time of the Permanent Settlement, the surplus realized by a zemindar of Durbhunga over his Government revenue is 38 times the net profits enjoyed by his predecessor at the time of the Permanent Settlement.

But it may be said that this great increase in the rentals of Behar districts is due to great extension of cultivation since the Permanent Settlement in Behar, as compared with Bengal, and not to enhancement of rates. This, however, cannot be the correct cause of the difference, for we find that Behar was described at the time of the Permanent Settlement as "one of the most fertile, *highly cultivated, and populous provinces of Hindustan in proportion to its extent of plain arable land*" (see Supplement III, Historical and Comparative Analysis of Finances of Bengal, by James Grant, Esq, Fifth Report, page 501, Madras Edition), while some of the (at present) most prosperous districts in Bengal (such as Dacca and Mymensing) were at the time of the Permanent Settlement described as uncultivated wildernesses. If anybody wishes to see what has been the effect of these ninety years of unrestrained enhancement on the condition of the Behar population, let him read Mr. James Grant's description of the Province as it was when he wrote his Historical Analysis in 1786 (Fifth Report, Supplement III to Historical Analysis, page 503, Madras Edition), and then turn to Sir Steuart Bayley's description of the same Province in 1873 (Administration Report, sections 38 to 55), or to Messrs. Geddes and MacDonnell's report in North Behar in 1876, sections 111 to 125.

When we compare Mr. James Grant's description of the flourishing condition of agriculture, manufactures, and commerce of Behar in 1786, with Sir Steuart Bayley's descriptions of poverty, misery, and oppression from which the same population suffered in 1873 (and continue to suffer), the question may well be asked how comes it that, while Dacca and Mymensing have been converted from uncultivated jungles to highly cultivated land, inhabited by a prosperous population, the poverty of Behar tenants has become so great within the same period and under the operation of the same laws as to be a scandal to our administration?

The answer is that the laws restraining zemindars from enhancing their rents have been practically a dead letter in Behar. If it be asked why this should be so, it may be replied in Mr. Mackenzie's words (which apply with special force to Behar) "that the landed and wealthy classes have powerful organs in the press and powerful friends both here and at home; many of them are very amiable persons, officials are glad to do them favours, and find it pleasant to be on friendly terms with them Every prejudice arising out of the relations of landlord and tenant in Great Britain is entirely on their side."

Be the cause however what it may, the fact is obvious that Behar zemindars have been permitted for the past ninety years to enhance their rents to a degree out of all proportion to any increase in the value of the produce, and out of all proportion to the enhancements of rent in Bengal (or it may be said in any part of the world) during the same period. The result is that persons whose grandfathers were in the position of tehsildars of Government revenue, satisfied with three-fiftieth part of the gross produce of the soil as their compensation for the risk and trouble of collecting the Government revenues, now advance and carry into practice theories of proprietary rights which would be scouted in any country in Europe. I think, then, that Behar zemindars have been too long allowed to act on these mistaken views of their rights and duties, and that they will have no reason to complain if all further enhancements of rent on their part are stopped for a generation.

I am aware that this proposal will be regarded as extreme, and that there is little hope of its being accepted; but I am also convinced that some measure of this kind is required in order within a generation to bring the condition of Behar tenants up to the level of prosperity already attained by the ryots of Bengal.

M. FINUCANE.

Note on Mr. Reynolds' note on occupancy rights in Behar.

I AGREE in the main in all that Mr. Reynolds has said in his note on occupancy rights in Behar. I would, however, point out that it is, I think, a mistake to say that the occupancy right has come to be looked upon as a privilege which may be acquired (under Act X of 1859) by the indulgence of the zemindar. It is only pleaders and people who derive their ideas on the subject from the courts who look upon occupancy right in Behar in this light, zemindars say that they look upon the occupancy right as a privilege to be acquired by their indulgence, but their acts very clearly show that they do not in reality think the occupancy right in any way a privilege the acquisition of which depends on their consent. I have endeavoured to find out from thousands of ryots what their ideas on the subject are. The result of my enquiries is that I have no hesitation in saying that

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not one ryot in a thousand in Behar ever heard of the twelve years' rule laid down in Act X of 1859. But it would be an error to suppose that they have therefore no idea of occupancy rights. On the contrary, they have the strongest possible conviction that they are entitled to hold their land as long as they pay the village rate of rent for it. I have asked the ryots of hundreds of separate villages in the Durbhunga estates (when Settlement Officer there) whether in case it was my will and pleasure to evict them, though they were willing to pay their rent, either their landlord or I might do so. The question seemed to them ridiculous. The ryot's answer invariably was "if we pay our rent at the village rates, why or how should you evict us." It used to take some time to make them comprehend the very idea of arbitrarily evicting them as long as they pay their rents, but when finally pressed for an answer to the question "Can I or the Maharajah of Durbhunga turn you out of your land of our own will and pleasure, whether you are willing to pay at the village rent rates or not;" the answer was "Of course you can do so just as you can do any other act of oppression (*zulum*), but it would be *zulum* and injustice all the same." Ryots make no distinction between twelve years' occupancy and two years' occupancy *as far as their right to hold the land* (paying the customary rate for it) is concerned. So strong is the feeling that they have a right to hold as long as they pay the rates of rent fixed for the village from time to time, that I have had hundreds of applications from ryots who absconded into Nepal and returned after a year or two to have their lands restored to their possession on the simple grounds that they were willing to pay the rent, and that the land had previously been occupied by them. In cases where I was unable to grant their request, these ryots very clearly intimated that they thought an injustice was being done them. No principle in land legislation can be wiser than that of recognising the customs, ideas, and feelings of the people for whom we are legislating, and I think one of the strongest arguments in favour of recognising occupancy rights by law in all cultivated lands other than the zemindar's nijjote or zeerat lies in what I maintain to be a fact, namely, that both ryots and zemindars do themselves at the present time think, and act as if they thought, that an occupancy right is inherent in the position of a tenant on ryotty lands, whether he be one year or twelve in possession being quite immaterial. Long possession has often resulted in the ryot being allowed to hold at privileged rates, but has nothing to do with the mere right to hold. I do not say that ryots are not sometimes arbitrarily evicted (a great many arbitrary things are done in Behar), but what I do say is that no tenant is arbitrarily evicted who does not feel that a wrong is being done to him, and that no *native* landlord evicts a tenant who is willing to pay his rent, without feeling that he is doing what—according to the customs and ideas of his countrymen—he should not do. I would therefore recognise an occupancy right as inherent in the position of the ryot *in all ryotty land*, when once the ryot is allowed to occupy such lands. It seems to me that such recognition (putting aside its expediency) would not be by any means the violent revolution or confiscation of existing rights that is often talked of by lawyers, and by the zemindars of Behar on the suggestion of lawyers, but it would, on the contrary, be nothing more than the recognition by law of *existing facts*. The traditions and feelings of the people (on which Act X of 1859 has really had very little influence in Behar) are a surer guide to the meaning of the Regulations of the Permanent Settlement (which were framed on information gathered from personal enquiries among the people) than the interpretation of statutes or the collection of reports. I have no hesitation in saying that if the feelings, traditions and *conduct* of the people of Behar may be taken into account in determining the meaning of the common law of India and of Regulations of the Permanent Settlement, their feelings, traditions, and acts entirely bear out the interpretation put on these Regulations by Messrs. Mackenzie and O'Kinealy; and they are, it seems to me, utterly inconsistent with the idea that a zemindar now has or ever had a right to evict a tenant as long as he pays the customary rent. I think that not one of the many zemindars whom Mr. Reynolds met at Bankipore (excepting of course those who are acquainted with our recent land laws) would pretend that he had any right to eject, or would at all events admit he had actually ejected, a tenant once allowed to settle on his estate as long as that tenant paid his rent. I cannot too strongly express my conviction that the recognition of an occupancy right as inherent in the position of every ryot holding ryotty land, even now, after twenty years' operation of Act X, means in Behar no innovation, but a legal recognition of the existing customs and of the ideas prevalent among the people themselves.

M. FINUCANE.

Bill II.

Section 6 —I would either have now registered and recorded all tenures and under-tenures in which the right to hold at fixed rates exists at present, and then do away with the presumption altogether, or I would substitute for "1839," "a period of twenty years before the passing of this Act." The effect of the section in its present form would probably be a very unjustifiable transfer of a valuable property from one set of persons to another. I take the example of the Durbhunga Raja's estates in Purneah. There a large number of tenureholders and ryots claim the right to hold at fixed rates. Test cases have been instituted to enhance their rates. The cases failed because these ryots showed they had held for twenty years before the institution of the suits at uniform rates. These persons would not, however, be able to prove that they have held since 1839 at uniform rates, though, as

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a matter of fact, they have done so. The effect of this section and section (16) will be, that the rents of such of these tenureholders and ryots as cannot prove they have held since 1839 at a uniform rate, can now be enhanced, except in the few cases in which they happen to have civil court decrees, though their rents could not be enhanced under the existing law; in other words, a very large and valuable interest will be transferred from the tenureholders and ryots to the proprietor. But assuming, for the sake of argument, that the tenureholders could prove they have held at uniform rates since 1839, clause (2) of the section would still enable the proprietor to enhance their rents. All he need do is to refrain from paying Government revenue, let the estate be sold by auction, buy it in *benami*, and then proceed to enhance. It may be said that no proprietor would adopt such a course. My answer is that this course was actually suggested to me when manager at Durbhunga, not by the proprietor, but by an officer of Government now engaged in settlement work there; the danger is not then so remote as may be supposed. I would therefore omit exception 2 in section 6, and substitute for the "year 1839" the words "for twenty years anterior to the passing of this Act."

Sections 9, 10, *and* 11—I have not in practice met any instances which would lead me to think that there is any occasion to devise special rules for enhancement of the rates of tenures or undertenures. All the cases I have seen, are either cases of middlemen or of ryots as defined in section 3. Middlemen can make their own terms by contract, and ryots, whether they hold ten bighas or two hundred, should, I think, be subject to the same law of enhancement. The latter part of section 9 provides in the case of a tenureholder who himself cultivates part of his tenure, that a reasonable rent shall be calculated for such portion and included in the gross rents. But suppose the tenureholder to cultivate or occupy the whole tenure himself. For example, a cultivating ryot holding two hundred bighas and cultivating the whole holding by hired labour at his own expense, according to what rule are his rents to be enhanced?

Section 16.—The objections urged against section 6 apply to this section also. My experience of claims to hold at fixed rates extending to detailed enquiries into each individual claim throughout the greater part of a sub-division, leads me to think that these claims are at present involved in great confusion in Behar. When the ryot sets up a claim to hold at fixed and favourable rates, the zemindar, or his representative, directs the putwari to enter the holding in his jummabundees at full village rates, the ryot refuses to pay at these full rates, the thikadar or zemindar does not sue him in court, and as claimants of the right to hold at fixed rates are as a rule men of some substance, the zemindar is unable to enforce payment by the illegal process of distraint which is had recourse to in the case of poorer tenants. The result is an arrear which accumulates on paper, matters are not brought to an issue by either party, and confusion ensues. The most satisfactory course now to adopt would, it seems to me, be to have all such existing claims enquired into and determined, and then to do away altogether with the twenty years' presumption.

The effect of section 16 will be the enhancement of the rents of jeth ryots and persons of that class, who have hitherto in a great many cases themselves successfully resisted illegal enhancements, and who alone have hitherto helped and encouraged poorer ryots to resist illegal exactions.

Section 18 (*E*)—I entirely agree that it is both expedient and just to declare by law that a right of occupancy is inherent in the position of every resident cultivator in India. The element of time in the definition of an occupancy right is "an innovation and an anomaly." I, however, think Mr. Reynolds is under a misapprehension as to the feeling among zemindars and ryots in Behar on the subject of occupancy rights. I have explained in a separate note* the points in which I think him mistaken. I am doubtful as to the wisdom or possibility of preventing undertenants of occupancy ryots from themselves acquiring occupancy rights (clause E, Explanation 3.)

* *See* Note on Mr. Reynolds' note on occupancy rights and enhancement of rents in Behar annexed.

M F.

Section 19.—Looked at from the point of view of public policy and expediency, it is obviously desirable that the actual cultivator should have a permanent interest in the land he cultivates. If occupancy ryots are allowed to sublet, and their sub-tenants do not acquire occupancy rights as against them, it is possible that in the course of time the occupancy ryots will become mere middlemen, and that their sub-tenants, who would then be the actual cultivators, will turn out to be a more impoverished and oppressed class than the tenants whose condition it is sought now to improve. I do not see what valid objection there is to allowing occupancy rights to accrue to the sub-tenants of occupancy ryots. If an occupancy ryot pays, say Rs. 3 per bigha, and sublets at Rs. 4 per bigha, I do not see why the sub-tenant should not have an occupancy right. The ordinary law of enhancement might apply to the occupancy ryot and his sub-tenants alike. The starting point would be different in calculating the amount of enhancement, and that need be all the difference. If the object be to discourage sub-letting, it would appear to me that sub-letting would be discouraged much more effectually by allowing the sub-tenant occupancy rights than by any other means. An occupancy ryot will hesitate before sub-letting when he knows he can never get rid of the sub-tenant, while he would have no hesitation in sub-letting when the sub-tenant is entirely at his mercy. The essence of the occupancy right is that the actual cultivator of the soil should have a permanent interest in it, for that permanent interest gives him a motive to labour and gives him also an interest in the permanent stability of the Government; but if the occupancy right is vested not in the actual cultivator but in a person who may be a mere rent receiver, the chief reasons urged in support of the right no longer hold good.

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Section 25, *clauses* 2 *and* 3.—The words "from some cause beyond the ryot's control" seem to me to be open to objection. Suppose the productive powers of the lands to decrease for want of irrigation caused by the ryot's failure to repair a "bund" or embankment which it was in his power to repair, but which he was not bound to repair, would the ryot not be entitled to an abatement of rent? I think he would; but yet it can hardly be said the cause of the decreased productive powers of the land was not a cause within his control. Again, suppose prices of produce to decrease because of difficulty in communication, owing, say, to a bridge being broken down; the ryot is not bound to repair the bridge. Would a fall in prices arising from such cause not entitle him to an abatement of rent? I would substitute words to this "effect from a cause which has not arisen from the ryot's fault or negligence."

Section 30.—I do not think arbitrary restrictions of this kind will be found to work well in practice. I would let the occupancy ryot make with his sub-tenant any terms that suit their mutual convenience, but I would give the sub-tenant a right of occupancy as against the sub-letting occupancy tenant.

Sections 31, 32, 33, *Chapter V, Bill II.*—May, it appears to me, be useful. Sections 32 and 33 are, I think, unnecessary. The general practice in Behar is for ryots to build their houses in bustee lands, and pay no rent at all for the site. I see no reason for allowing a mahajun or shop-keeper to acquire occupancy rights after twelve years' possession. I would leave them make their own terms with their landlords by contract. I would therefore omit sections 32 and 33.

Sections 37 *to* 46, *Chapter VII.*—I fear the provisions of this chapter will make the transferability of occupancy rights a doubtful boon; at all events, to Behar ryots. The declaration that the landlord is entitled to a fee of two pice in the rupee on the annual rent of the holding will in practice lead—

(1)—To the extortion of much larger sums than the authorized fee.
(2)—To refusals to register transfers altogether.

What will take place is this: the landlord will refuse to register the transfer unless a large *salami* is paid him. The ryot will then have to sue the landlord under section 44 in the civil court. The onus of proof of application for transfer having been made, and of tender of the authorized fee will be on the ryot. All experience has shown that the Behar ryot has no chance of succeeding in suits against landlords in the civil court, *when the onus of proof is on the ryot.* The remedy of a civil suit against landlords has proved utterly inadequate—

(*a*)—To enforce giving of legal receipts.
(*b*)—To secure giving of pottahs.
(*c*)—To stop exaction over the stipulated rents.
(*d*)—To prevent arbitrary ejectments.
(*e*)—To prevent arbitrary enhancements.
(*f*)—To prevent illegal distraint.

If the remedy of a civil suit has proved inoperative in all these cases, it will be equally inoperative in enforcing the registration of transfers of holdings without the willing consent of the landowner.

Section 43.—Would in practice enable landlords to attach and hold possession of, and to cultivate and let for cultivation, half the occupancy holdings of Behar. In the first place, it will take years before occupancy ryots of Behar learn that they are bound to register successions to holdings. According to the present practice, when the father dies the son does not register his name as successor to the holding, for years, it may be, after the father's decease, and very often not at all. The father's name thus continues in the zemindar's or putwari's sherishtas. The son or other heir answers to and takes receipts in his father's name. However unsatisfactory and unbusiness-like this practice may appear, cognizance should, I think, be taken of the fact *that it is the practice* and for years is likely to continue so. Now, under the provision of Chapter VII, all a landlord need do in order to get possession of the occupancy holdings on his estate is to take no notice of the deaths of his occupancy tenants for a few years, to retain the names of deceased tenants in his sherishta, then to come down on their successors, and say "your fathers died years ago, you have not registered your succession within six months as you were bound to do. I shall attach and hold possession of your holding and apply to the civil court for a declaration that they are at my absolute disposal." By making the attachment just at the time when the ryot is about to harvest his crops, the landlord would succeed in exacting not alone ten times the fee prescribed in section 39, but any fee he chose to demand. These are the inconveniences which will arise where the ryots, in ignorance of the law, fail to apply for registration. But hardships equally great are likely to arise where the ryots do apply for registration. In such cases the landlord will refuse the registration till a *salami* is paid him. The ryot has then to sue the landlord. The latter will deny the application for registration; he will deny tender of the fee, or if he admit that the application was made, he will deny that it was made within the prescribed time. The ryot will find the onus of proving all these things so great, and he will find the expenses and worry of his civil suit so heavy, that he will soon learn that he had better pay the zemindar any *salami* he may demand on the transfer, which means that the right of transfer will become worthless. For those reasons I would substitute for Chapter VII the following:—

Sections 37-38.—To remain as they are.

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Section 39.—I would substitute a fee "of one rupee" in every case. This fee I would have paid as cost of registering the transfer.

Section 40.—To remain as it is

Section 41.—I would substitute "If in any case," &c., down to "decree," as it is—then "application for registration of such transfer is not made and the proper fee tendered, the transferer shall remain liable for the rent and the landlord shall not be bound to recognise such transfer till such application is made, but the transferree shall be also liable for the rent for such time as he may have been in possession."

Sections 42 *and* 43.—I would omit altogether.

Section 44.—For "may sue such landlord in the civil court," I would substitute "may make an application to the civil court (or Collector) (' or sub-divisional officer)," setting forth the facts of the refusal and the civil court (or sub-divisional officer') shall thereupon call on the landlord to show cause why the transfer, &c., should not be registered. If the landlord does not show cause such civil court or sub-divisional officer may, &c, *i.e.*, (as the draft).

Section 45.—I would leave as it is. Receipt of rent from the successor or transferree might probably with advantage be deemed equivalent to registration of the succession or transfer in every case, and not alone in the case of petty landlords. I cannot help thinking the provisions of the chapter as now drafted will in practice make the right of transfer of little or no value to the ryot. The ryot having shown his *bonâ fide* desire for registration of the transfer by his application to the court, it should be presumed that he had duly applied to the landlord. The onus of proving that the application was not duly and properly made should then be put on the latter.

Section VIII.—Section 47.—1st Asarh corresponds to 14th June.

1st Assin corresponds to 16th September.

1st Pous corresponds to 15th December.

1st Choyt corresponds to 13th March.

The principle on which due dates of rent instalments have been fixed in the North-Western Provinces and Oudh Rent Acts is that a resonable time (say fifteen or thirty days) be allowed between the usual time of harvesting the principal crops (bhadoi, rubbee and aghani) and the dates of the instalments usually liquidated from these crops. The obvious advantage of fixing due dates on this principle is, that while, on the one hand, the ryot's standing crop is not made liable to distraint for the instalment which is ordinarily liquidated from that crop, on the other, by fixing the due days of instalments on dates soon after the ryot has had reasonable time to harvest and sell his crops, the zemindar can make and enforce his demand before the ryot has had time to waste the proceeds of the harvest in social or other extravagant entertainments. This principle has not, as far as I can see, been kept in view in fixing the dates given in the Bill. The principal rice crop is cut from the 15th to the end of December; the ryot cannot therefore be expected to have disposed of his rice before the 15th January, yet one of the kists is fixed for 1st Pous or 15th December. The result will be that the zemindar can distrain the standing paddy crop every year for a kist which only becomes due on December 15th and which is ordinarily liquidated from the proceeds of that crop. I would prefer to leave it open to the Collector or Board to fix the amounts and due dates of instalments in consultation with the zemindars and ryots of each district or part of a district, and on the principle above described; but if particular dates must be fixed I would have instead of the dates given in the Bill,—

15th January for Aghani kist
15th October for Bhadoi kist.
15th March for Rubbee kist.

There seems to be no reason (other than the symmetry of having four quarterly instalments) for the fourth or June kist.

Section 83.—Might, I think, with advantage apply to Bengal as well as Behar.

No penalty for withholding statement of account.

The penalty for withholding the statement of account might, I think, be made similar to that for withholding a receipt; that is to say, if the last receipt given before or at the expiration of the Fusli or Bengali year does not, in addition to the particulars specified in clause (*a*), also specify the particulars set forth in clause (*b*), such last receipt shall be held to be an acquittance up to the end of the year. The section might be modified accordingly or an additional clause (*e*) might be added to this effect—(*e*) "If on the expiry of the Fusli or Bengali year, whichever prevails, a statement of account is not given to the ryot as required by clause (*b*), then the last receipt given before the expiry of the Fusli or Bengali year shall be deemed to be an acquittance in full of all demands up to the end of such Fusli or Bengali year, as the case may be, any thing in such last receipt to the contrary notwithstanding"

Sections 50 *to* 53.—I think the provisions of these sections good, except perhaps 50 (*a*) and 51 (*a*)—Present law (section 46, Act VIII of 1869), provides for the deposit of rent in court only where the amount of the rent payable is in dispute; that is to say, where the ryot tenders the full amount which he considers due from him, and the zemindar refuses to grant him a receipt in full. But the section as now drafted only provides for cases where the zemindar refuses to grant a receipt at all. The clause should, I think, be modified somewhat, thus: "if the tenant has reason to believe that the person to whom his rent is payable will

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not be willing to receive the same and to grant him a receipt, or *when the tenant is willing to pay the full amount which he considers due from him and he has reason to believe that the person to whom the rent is payable is not willing to receive the said amount and grant forthwith an acquittance in full"* It is obvious the zemindar may be quite willing to receive the amount tendered and grant a receipt for it, without giving a *farakbattie* or receipt admitting that the payment was in full discharge of all demands up to date.

Section 51 (*a*) —According to this section the rent must be deposited within fifteen days of the date it becomes due. This seems reasonable enough in theory, but the practical effect of it will, I fear, be to prevent ryots from depositing rent in court altogether I have never found ryots tendering their rent to their landlord within fifteen days of its falling due, and I do not think they will deposit it in court within fifteen days of its becoming due. If it be desirable that ryots should in certain cases deposit their rents in court, or have an opportunity of doing so at all, the law should be such as to enable him to do so not theoretically but in practice. I would allow deposits to be made at any time between the date when the amount to be deposited becomes due, and the date when the next instalment of rent shall become due.

Section 67 —I would not allow general survey and measurements more frequently than once in ten years. Every body of practical experience in measurements knows how zemindars use them to worry and harass their ryots, and extort enhanced rents through them. A zemindar having once made a general survey of an estate should be bound by it for at least ten years. Partial measurements which may be necessary in cases of alluvion or diluvion might be made at any time.

Section 68.—This section will work nothing but mischief in Behar. The local bigha varies in different districts and pergunnahs, but it is in all districts double the area of the Bengal standard bigha or more. Ryots will be utterly unable to understand or in any way check a measurement made according to the Government standard measure. Being unable to understand such a measurement, they will sullenly absent themselves from or actively oppose it, and the measuring officers will find themselves forced to have recourse to high-handed proceedings, recording such areas and names as they think fit. The ryots will not co-operate with them, and the results of such surveys and measurements will be the usual ones, where the ryots are not consulted, and it is not thought worth while to convince them of the accuracy of the areas recorded against their names. These results are, charges on the one side against the ryots of turbulence and unreasonableness, and on the other against the measuring officers of high-handedness, the charges on both sides resulting in confusion and failure, which might be obviated by patiently and carefully explaining to the ryots the results of the measurement and convincing them of its accuracy. I would therefore reverse the order of proceeding laid down in this section, that is to say, I would have the measurement or survey made according to the local standard bigha which the ryots can understand, and, if necessary, then convert the areas thus ascertained into the areas according to the Government standard. I do not see, however, that any useful results will ensue in Behar from this conversion of local standard areas into the Government measure of 14,400 square feet If any measure is to be taken as the Government standard in Behar, it should be the bigha of 5¼ haths to the luggee, that is to say, in other words, of 27,225 square feet to the bigha. This is the standard adopted at present for opium and other Government measurements in Behar, and not the Bengal standard of 14,400 square feet.

Section 69, *Clause* (2.)—This section seems to me open to the very gravest objection. It is in fact tantamount to making the principle of giving compensation for improvement a nullity. No zemindar (in Behar at least) will give his consent in writing to the tenants making improvements. I think all that was required was to omit clause (*b*), section 77, as drafted by the Commission. To the objection of the Commissioner of Burdwan that works unskilfully executed may do more harm than good, it may be answered that a work which "does more harm than good," is not an improvement within the meaning of the section, for such a work would not lastingly increase the letting value of the land. The zemindars' objection to section 77A as originally drafted might be met by the following provisions taken from the North-Western Provinces Act (See section 22N of Bill drafted by me), viz. if "any tenant under colour of this section (77) executes any work by which the letting annual value of the land is diminished, he shall be liable to pay damages therefor." If this is not thought sufficient, the zemindar may be authorized to apply to the court for an injunction restraining the tenants from executing any work which he alleges is not a real improvement, but to make the landlord's consent necessary *ab initio* seems to me tantamount to a denial of the right to make improvements altogether. I would, therefore, either modify section 69 as suggested or strike it out, and reject the whole principle of giving compensations for improvements. I am strongly in favour of giving compensation and of authorizing ryots to make wells or similar improvements without the landlord's consent, but I would not give compensation in name, while withholding it in practice.

Section 70.—I would allow an occupancy ryot to sub-let without the written permission of the landlord, provided the landlord has the power of distraining the produce of the lands so sub-let.

Chapter XI, Special provisions for Behar.—I consider that the provisions of this Chapter as drafted by Mr. Reynolds are generally excellent, and I have only few changes to suggest. From section 92 it would appear that if a landlord sub-lets *seerat* lands on the

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bhaoli system and there is a dispute as to the amount or value of the crop, the tenant may be prohibited from cutting and harvesting the crop till the landlord gives him permission to do so. This I presume is not intended. Even in *zeerat* lands, if the landlord chooses to sub-let them, he should not I think be allowed to arbitrarily prohibit the harvesting and apportionment of the crop. I therefore am of opinion either that section 91 should be applicable to *zeerat* lands if sub-let to a tenant, or, at all events (in order to prevent misconstruction), that it should be distinctly stated that the provisions of section 88 apply to *zeerats* if sub-let.

Restriction suggested by Behar Committee not noticed. (2).—Mr. Reynolds has not noticed in his notes or in the Bill one of the most important limitations on enhancement suggested by the Behar Committee, and unanimously adopted by them, namely, that the rates paid by occupancy ryots when once fixed shall not be enhanced, except (*a*) by a decree of the court, or (*b*) by written agreement registered under the Registration Act. I think this a most salutary and necessary limitation on enhancement in Behar. It is taken from the Oudh Rent Act. I found in Durbhunga that the absence of such a provision led to deplorable results. When thikadars or zemindars there wanted to enhance they made a demand of rent at the enhanced rate which they were endeavouring to obtain. Representative ryots resisted these demands, they were sued for arrears at the enhanced rate, the suits were dismissed, and the rates admitted by the ryots were declared by the courts to be the rates at which rent was demandable; yet the enhanced rates were, in disregard of the orders of the courts, retained on the jummabundee papers. The ryots were again sued after a few years for arrears at these enhanced rates, the ryots produced the courts' decrees, and it was then alleged that subsequent to the decrees the ryots assented to the enhancement. This the ryots denied, but the process of suing them was repeated till they yielded. Now, all these malpractices on the part of zemindars would be obviated by declaring that a rate once fixed can only be enhanced (*a*) amicably by written agreement duly registered, or (*b*) by a decree of the civil court. If the enhancement is *bona fide*, there need be no difficulty in registering a written agreement setting forth the amount of the enhancement. I would, however, allow all or any number of the ryots of the same estate to signify their assent to an enhancement in one document. The present practice where the ryots *bona fide* assent to an amicable enhancement is to have executed a "*shera nama*" or deed specifying the enhanced rates. The fees for registration of these deeds are, however, at present very high, being a percentage on the rent received. I would make such deeds compulsory, and would allow them to be registered for a fee of eight annas or one rupee, whatever the amount of rent received may be.

Section 94.—After the word "receipt" I would insert "or statement of account"

Chapter XV, Distraint.—If distraint is to be retained, I do not think a better system can be devised than that proposed in this chapter.

Section 102.—I would say "a written and registered engagement."

Section 123.—"Said" a misprint for "held."

M. FINUCANE.

W. H.—Reg. No. 1503J—132—18-5-81.

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Dated Burdwan, the 13th May 1881.

From – W. R. LARMINIE, Esq., Collector of Burdwan,

To—The Secretary to the Government of Bengal, Revenue Department.

As requested in your No. 574—235LR, dated 1st March 1881, I have the honor to submit the following report.

2. Before commencing a discussion of the details of the Bill, a copy of which was forwarded to me with the letter above referred to, I trust it will not be considered out of place for me to make a few remarks upon the general principles which should guide us in legislating between landlord and tenant. It is a subject to which my attention has been of late specially drawn, living, as I have been, for nearly 1½ years in one of the most disturbed counties of Ireland, and having had unusual facilities for hearing both sides of the question thoroughly discussed.

3. At the bottom of the whole controversy is the question of the weight to be allowed to what are called "the rights of property." Some look upon these as something sacred, and consider that any attempt to tamper therewith is an act bordering upon the profane. Others, again, regard such a view as a remnant of middle age superstition, and argue that the determination to preserve the rights of property is founded purely on public policy, and that it is quite possible that these rights must on occasion give way to the interests of the general community. I have no doubt in my own mind that the latter is the correct view, and, as a matter of fact, it is the one on which all civilized Governments act in the present day. Whenever land is required for a railway or other public purpose, it is taken out of the possession of the owner, whose feelings on the subject are ruthlessly disregarded. The fact that compensation is given does not affect the general question. It frequently happens that no money compensation will make amends to an owner for the loss he has sustained, but still the interests of the public must be allowed to override those of private individuals. The above remarks apply with full force to the position of the zemindars in Lower Bengal. When the Perpetual Settlement was concluded, certain rights were conferred on the existing zemindars, which rights under the law of inheritance or otherwise would ordinarily be continued to their successors. The chief of these rights was the right to hold as proprietors the lands of which they were in possession, on condition that they paid the revenue *then* assessed. It is quite clear that no right was then conferred on them to rack-rent their tenants, but on the contrary the old Regulations abound in expressions which, though sometimes vague, are proof positive that the Government of the day fully recognized the rights of the ryots to hold their lands as long as they paid fair rents. I use the word "fair" advisedly. It is true that the zemindars have since established a right of enhancement partly by custom, partly by the action of the courts, and that this right has of late years been confirmed by the Legislature. Mr. Mackenzie in his remarks of the 23rd May 1880, appended to the report of the Rent Law Commission, concedes that this right cannot now be denied them. To this I agree, with the limitation that this right should not be necessarily one extending indefinitely into the future. Nothing can be more true theoretically than the maxim that one generation cannot be bound by the acts of its predecessors. In practice it is admitted that continuity of policy is, on the whole, almost a necessity of social and national life, but there are numerous instances in which it has been found necessary to repudiate the most solemn engagements of former days. Circumstances change to such an extent that a strict adherence to old contracts would sometimes prove the ruin of a nation. It has been proposed, and without exciting any extraordinary outcry, that Government should purchase the existing right of the Bengal zemindars by paying them a bulk sum, equal to say 20 years' purchase of their existing net profits. I have no doubt if such a step were possible, and if it were clearly shown that looked at in every point of view it would be advantageous in the future to the nation at large, that it should be taken at all risks. Arguing *a fortiori* it is obvious that if the public interest demanded it, the Legislature could and ought to place any limitations it pleased on the power of landlords to enhance the rents of their ryots; such limitations, if exceeding those at present in force, not being allowed to act until a certain number of years had elapsed, or, in order to avoid the feeling of uncertainty which such a course would give rise to, a money compensation being given for the probable increase of net profit during the same number of years. I am not now actually advocating such a course, but am merely pointing out that, in regulating the relations between landlord and tenant, regard should be had to the future prosperity of the country, and that no superstitious reverence for the rights of property should be allowed to exercise an overpowering influence in coming to a conclusion. As a matter of fact, in small matters, the principles I have enunciated are acted on every day. If land is required, say for a railway station, the price paid to the proprietor is the actual market value of the land, with 15 per cent. added on to compensate him for injured feelings, but the prospective increase in the value of the land caused by the erection of the station is not taken into account. His neighbour may profit by the improvement, but he must rest content with what he has got. Instances of similar interference with private rights in the interest of the public might be multiplied to almost any extent.

4. If the views given above be sound, and I do not see how they can well be controverted, their application to the present case is very simple. It is clearly the duty of

Government to determine on grounds of general policy what shall be the *future* legal *status* of the zemindar and what of the ryot. To arrive at a correct conclusion on this point it becomes necessary to consider what useful function is performed by each of these two members of the body politic; what probability there is of increasing the usefulness of either; what changes can be made without creating so serious a disturbance in the existing conditions of society that the proposed benefits would be more than counterbalanced: whether if the changes effected should cause immediate loss to either party, their action should be postponed to future years or compensation given at once.

5. I think it will be admitted by most people, except the zemindars themselves, that the cultivating ryot is the most important element in the national life of Bengal. In fact, without him the province would cease to have a political existence. If he is happy and contented the country is prosperous, if he is miserable and on the verge of starvation nought but disaster can be expected. On the other hand, the entire elimination of the zemindar and the substitution of Government as the immediate rent-receiver would be felt directly but for a few years. Whether the indirect effect of such a change would be beneficial or not is not the subject of the present discussion. It may be admitted that the zemindar is a convenient channel for the collection of the land revenue, and that in various ways his existence facilitates the action of Government in carrying out certain schemes for the improvement of the country. It may perhaps be also admitted that he acts as a sort of ballast for the ship of the State, but is he anything more? Does he exercise generally a beneficial influence on the condition of the masses? Is there any probability that he will be improved so as to do so? If he is left as he is will he not answer any useful purposes to which he has been put just as well as if his wealth were doubled? I fear history will decide against the zemindar of Bengal. He has been tried now for nearly a century and has been found wanting. True, some of them have endowed schools, dispensaries and other useful institutions, but I appeal to the experience of those who know, whether the tenants have not in many, if not most, instances, repaid fourfold the amounts thus spent in the way of increased rents, *abwabs*, or some other irregular imposts. In my opinion, such generosity has generally been of a more or less forced character and has been drawn forth by the Oriental tendency to propitiate the powers that be. As individuals many of the zemindars are very estimable men, and the best of them are those who interfere least with their ryots; but this is no reason why privileges should be conferred on them in perpetuity to the detriment of the many whose interests should be the first consideration.

6. Having thus stated in general terms the point of view from which the question should be approached, I proceed to discuss the details of the draft Rent Bill which it has been proposed to pass into law. In doing so, seeing that the zemindars are too strong and public opinion is not sufficiently educated to allow of the principles above stated to be carried out logically, I shall merely advocate such proposals as, to use a now well-known phrase, come within the sphere of practical politics. The numbers given refer to Mr. Reynolds' draft Bill.

7. *Section* 6.—I deprecate strongly the proposed change. It would deprive all present holders of such tenures of the existing presumption in their favour. As the law at present stands, if a zemindar were to dispute such a tenure, the holder could sustain his title by proving that his rent had not been changed for the last 20 years; whereas if the law be altered as proposed, he would be obliged to prove his holding under similar conditions since 1839. If the present law is considered injurious to the public interest, the change should not be made retrospective, and it might be enacted that the holder of a tenure should prove his holding at unchanged rates since 1861. At the same time I see no good reason for any alteration in the law. I am inclined too to favour the provision introduced by the Rent Law Commission which limited the avoidance of incumbrances.

8. *Section* 8.—I think the section as amended is equitable and can be easily worked.

Section 9.—There are very few tenures, if any, in this part of the country which are liable to enhancement; and indeed except the Rungpore jotes, I have not had experience of any. I am inclined, however, to think that in the interests of the ryots the higher the limit the better. If a tenure-holder gets only a small percentage he will endeavour to raise his ryot's rent as high as he can; whereas if he get a higher rate of interest, he may possibly rest content.

9. *Section* 10.—This refers to almost the only case in which the creation of a tenure is of *public* advantage. I do not see why the limit of unreclaimed land should depend upon the size of the tenure. Would it not be fairer to fix a certain number of bighas as the limit. It seems to me too that the section should be made to apply only to the reclaimed portion of the tenure, and that in that case 50 per cent. should be the limit instead of 20.

10. *Section* 11.—It seems to me somewhat improbable that a tenure of which the rent is liable to enhancement would ever, except for fraudulent purposes, be let at so low a rate as to admit of its being doubled in 10 years, except in the case of tenures referred to in section 10, and then the alteration proposed above would obviate the necessity for such a limit. I should prefer that the enhancement should of necessity be gradual, if the amount of increase exceeded 25 per cent. on the original rent. A sudden demand for a largely increased rent might frequently be productive of great hardship to the tenure-holder. In my opinion the date of the final order is a better starting point from which to reckon the ten years than that proposed by Mr. Reynolds, but I would make the term 15 years instead of 10.

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11. *Section* 11 of the Bill drafted by the Rent Law Commission has, I think, been wisely omitted from the draft now under consideration. It will of course be necessary to lay down for the guidance of the Courts some principle on which they can determine whether a tenant is a ryot or a tenure-holder, but the consideration of the point will be much influenced by the decision of the further question as to whether a right of occupancy can be acquired under a ryot with a similar right.

12. *Section* 16.—The same observations apply as in the discussion on section 6.

13. *Section* 18.—It is on this section, I imagine, that the battle will be mainly fought; and in discussing it I shall take the opportunity of considering the proposals contained in Mr. Reynolds' demi-official letter of the 14th April 1881. I have also perused the letter addressed to the Secretary to the Government of Bengal by the British Indian Association, and can therefore judge what the views of a certain section of zemindars are on the subject.

14. It seems to me undoubted that for many years before the Permanent Settlement the greater number of the cultivating classes who had really a "fixed habitation" possessed what are now termed "rights of occupancy." It is no less clear that these rights as a rule were derived from custom, and that there was no practical difficulty in determining who were entitled to possess such rights. It seems to me absurd to urge that the conditions necessary to the acquiring of rights of occupancy should cease to exist at the time of the Permanent Settlement. If it was politic before that date to allow certain privileges to certain classes, why should it cease to be so afterwards. The whole question in my opinion depends upon the permanency of residence, and any enactment on the subject should make this point clear. The words "fixed habitation" convey the idea in a sufficiently definite way to ordinary minds, but I fear that they are vague enough to admit of extensive litigation, and I would therefore approve of some more definite rule being laid down. I do not attach the slightest weight to the argument that the landlords would have no hold upon, or influence over, ryots who might reside upon the estate of a hostile zemindar. The influence of a zemindar over his ryots is, in my opinion, generally speaking pernicious. I at least have not had much experience of their exercising it for good. Is it not the case that in this country the zemindar who rests content with the position of a rent-receiver is the least hurtful to the ryot? I do not wish to mention names, but it is notorious that some of those who have been most active in carrying out schemes for the benefit of their tenants, or others, have procured the means for their so-called liberality by getting the uttermost farthing from these tenants either by raising their rents or levying forced contributions. I know one zemindar who has long been noted for his public spirit whose tenants are paying rates double those paid by the tenants of surrounding landlords who are as yet unknown to fame. The landlords talk of proprietary right, but, as I said before, such a right means only just as much as the State chooses. I really do not see why a landlord should not be well satisfied if he gets a fair rent. Any other privilege he has assumed to himself is to harass the ryot and get as much out of him as he can. In my opinion the rule of the Bengali zemindar is demoralizing in every way. If he fights with his neighbour, he gets his tenants to bring false cases against those of his antagonist. He constantly impedes the course of justice, hushes up crimes, encourages his amla in violence, takes upon himself to punish his dependents for anything which he may deem an offence; in fact, sets himself up as an administrative power, independent of, and in some ways superior to, the law of the land.

15. However, to meet the objection of want of definiteness, it seems to me that some such modification as that proposed in Mr. Reynolds' letter, above referred to, is necessary; but the term of 12 years to entitle a man to acquire the character of a resident ryot is, I think, too long. It would bear hard upon a number of men who have of late years taken to agriculture in consequence of the impossibility of earning a livelihood by manufacturing pursuits. In this district I know many weavers have regularly settled down within the last few years and made cultivation their life occupation. This change is for their benefit and should not be discouraged. It appears to me that if a man has lived for three years *as a cultivating ryot* in any one estate it may be fairly considered that he intends to make that place his "fixed habitation." There should be, I think, some provision which would prevent landlords from, as it were, wriggling out of the law by temporary ejectments. For instance, a zemindar holding several distinct estates might insist on his tenants periodically shifting their residences. It might be enacted that, notwithstanding any temporary break in the period fixed, the court could determine the question of residence in favour of the ryot.

16. The proposed modified enactment beginning "every resident ryot has a right, &c.," is open to the objection that if he were also a *tenure*-holder in the estate he would acquire rights of occupancy in the lands so held. Only a verbal amendment is required. I am not sure also that some limit should not be placed on the amount of land which could be acquired by a ryot with rights of occupancy. To sublet what he had, and take on fresh lands to be cultivated by himself, would bring about a state of things which is not contemplated, and would certainly not be desirable.

17. There would be some difficulty in making the rules applicable to holdings purchased by others than resident ryots. If a ryot in one estate purchased by private sale the rights of occupancy possessed by a ryot in another estate, as a resident ryot, and not by the 12-year rule, would his purchase hold good? The following is an example of what I mean. If A, a resident ryot in estate X, cultivates lands therein for even one year, he acquires rights of occupancy therein. Can B, a non-resident ryot, by purchase acquire these rights?

18. It will be doubtless necessary to render it impossible for death or partitions to prevent the acquisition of rights of occupancy. There may also be other contingencies

against which it would be advisable to guard, and some general section might be enacted setting forth that rights of occupancy cannot be destroyed except as set forth in the Bill

19. The question of sub-letting here presents itself for consideration. At first sight, it appears that to allow a ryot with a right of occupancy to sublet his holding would be illogical in the extreme, and I am inclined to think that no such subletting should be ordinarily permitted. There are cases in which it would be impossible, or at least very difficult, for the holder to cultivate the land directly, I mean such as would arise during widowhood, or minority, or from physical incapacity. I think that it would not be difficult to frame a clause which would allow the holder of an occupancy tenure to sublet when incapacitated by causes beyond his control from carrying on direct cultivation ; but, whenever the incapacity came to an end, he should be obliged to resume his position, or else forfeit his rights, becoming a tenure-holder, and allowing his undertenant to acquire what he had lost. Under no circumstances should the sub division of a holding be allowed without the written consent of the landlord. It is evident, from what I have stated above that I do not approve of undertenants being allowed to acquire rights of occupancy simultaneously with the ryots to whom they pay their rents. The existence of such rights in duplicate would be, in my opinion, inconsistent with the principles laid down in the Act.

20 *Section* 19.—I entirely approve of the provisions of this section. Freedom of contract is a much abused term. All arguments founded on it imply that the contracting parties are free agents. Now no one will venture to assert that, speaking generally, the Bengali ryot is a free agent. His position is in that respect worse than the Irish tenant, who can, as a last resource, emigrate ; and the British Legislature has recognized the fact that Irish tenants are not free agents. A man may be very intelligent, and capable of managing his own affairs, but he cannot overcome the force of circumstances. I believe that if the ryot were allowed to contract himself out of his rights he would be gradually either compelled or induced to do so, and the class whose well-being is so essential to the prosperity of the country would, in the course of time, efface itself.

Section 20.—There is doubtless a good deal to be said on both sides of the question, whether rights of occupancy should be generally transferable or not, but on the whole, the the provisions of the draft Bill seem most in the interest of the ryot. As a matter of fact, in very many districts, such rights are habitually sold by the Courts. In Burdwan and Bankoora I can speak from personal experience, and can say that what are called *jote jummas* are as easily sold as any tenure I hardly understand how mortages can be allowed if courts cannot take cognizance of them. I think the law should be definite on the point.

21. *Section* 21.—I do not quite see on what principle 50 per cent. has been fixed. It seems anomalous that if a ryot with rights of occupancy pay his rent in cash, it cannot be raised beyond one-fourth of the value of the gross produce, but that if he pay it in kind, his rent may be 50 per cent. of the same. I could understand this being politic if the ryot were the more powerful party, as he might be induced by the enactment to select the more civilized way of paying his rent, but, as things are, it seems to me that all landlords would do their best to return to the system of rent being paid in kind. I would reduce the maximum to 25 per cent.

22. *Sections* 22 *and* 23.—There is no doubt that the working of the law laid down for enhancement of rents is fraught with difficulty. The explanations under section 22, though framed in the interest of the ryot, would, I fear, increase the perplexities of the Courts. There are so many points upon which evidence could be brought, that suits for enhancement might be indefinitely prolonged, and the long purse would probably win in the end. Could no plan be devised for putting an end at some period or other to the necessity for such suits? Is it impossible to form an estimate of what would be the present value of probable enhancements in the future? I think the amount would be inconsiderable, and if it were offered as compensation to the zemindars they would gladly take it and give a receipt in full for all problematical increase to their rent-roll. Of course, if a landlord at his own expense improves his property, he is generally entitled to the whole increase in value, but such cases are unfortunately very rare. In fact, if they were not, the zemindars *raison d'etre* would be greatly strengthened and the policy of surrounding the ryots with safeguards would be by no means so clear. In consequence of the difficulties which are so patent in the enhancement sections of the Bill, I am inclined to think that it would be simpler to fix a rough-and-ready means of determining a fair rent. The gross produce seems the best starting point, and some such provision as that which appears in the Irish Land Bill and gives the Court the power of determining what rent a solvent tenant could fairly pay, would answer all practical purposes, the Legislature fixing a maximum limit, say one-fourth of the gross produce. The various refinements which are visible in the illustrations under section 22 would only increase litigation, and I do not think there is any special advantage in recognizing so pointedly rights which Courts would naturally take into consideration, if proved in the ordinary way. I think it would be well to eliminate every thing which would unnecessarily suggest the assertion of doubtful rights. Make the position of the ryot as safe as possible, but avoid stirring up questions which will probably induce the ryot to ruin himself in the vain endeavour to grasp at a shadow. It is worth while to note the spirit which prevades the reply of the British Indian Association on the enhancement question. It is actually alleged that if a ryot improves land, the outlay is generally covered by the crops of one year, the inference being that in subsequent years the landlord should obtain at least a share of the enhanced value, if not the whole of it. This injudicious plain speaking shows how necessary it is to tie the hands of the zemindar. When

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he intimates that the ryot is only entitled to the bare return of his expenditure, and expressly states that a ryot generally is not foolish enough to incur a *large* outlay without making a special agreement beforehand, it is high time to put some limits on his selfishness and greed.

23. With reference to clause (*a*) of section 23 I quite agree with the view that the landlord is logically entitled to only one-fourth of the unearned increment, and I would adhere to that limit unless the zemindars show themselves disposed to discuss the rent question in a more liberal spirit than they have hitherto displayed.

24. *Chapter IV, Commission's Draft*—As it is to be hoped that occupancy rights will be established on the broad basis suggested, this chapter will probably be unnecessary.

25. *Chapter IV, Mr. Reynolds' Draft.*—The provisions of this chapter seem fair to both parties. If the definition of "resident ryot" is settled, as proposed, the latter part of clause 3, section 28, might be omitted. Section 30 is, I think, calculated to discourage subletting.

26. *Chapter V*—I would omit section 32. Its introduction will give a handle to the opponents of the Bill, who are ready to declaim against its so-called revolutionary character.

27. *Chapter VI*—I see no objection to the principles on which this chapter is founded. The *benamee* question is much too large to be approached in any way not thoroughly comprehensive.

28. *Chapter VII.*—The provisions of this chapter appear on the whole equitable, if they can be carried out; but in cases of succession, where the heirs are ignorant women or children, there is every reason to fear that the landlord would be able to get possession of the holding. I am inclined to think that every transfer of or succession to a tenure, under-tenure or occupancy holding should of necessity be recognized by the landlord, subject to the conditions mentioned in section 38, unless the solvency of the new tenant be doubtful, when the provisions of section 45 would apply. I would not leave the civil courts any option in the matter by allowing them to determine "sufficient grounds." Indeed, I think, an application to the Collector for an order directing the landlord to register would be a more effectual and speedy procedure. The Collector would then call upon the landlord to register or proceed under sections 38 or 45. If he failed to appear, the Collector's order of transfer would have all the effect of a transfer by the zemindar. The procedure proposed in the draft Bill seems unnecessarily cumbrous. There appears to be a clerical error in section 41—"Three" months should be "six."

29. *Chapter VIII.*—The question of instalments is somewhat difficult. I am inclined to doubt the wisdom of fixing any special dates for payment; but I would enact that interest should only accrue from four fixed dates corresponding nearly with the latest dates fixed for payment of Government revenue. This would simplify accounts I would also enact, that principal and interest should be shown separately and that compound interest should not be allowed. If it is argued that ryots will thus be encouraged not to pay their rents, I would reply that the landlord has it always in his power to proceed according to law, and that interest is now often allowed to accumulate till the unfortunate ryot is so in the hands of the landlord that he can never hope to be free. I believe that in England interest is seldom demanded on arrears of rent.

30. The provisions of section 49 seem complete except in one particular I think it would be most desirable that the receipts and accounts should separate the items of principal and interest. If this be not done, compound interest can be levied without any possibility of check. The counterpart of a receipt should not be accepted as *prima facie* evidence. I do not think the law of evidence would admit it as such.

31. The sections regarding deposit are, I think, well suited to the circumstances of the country, but the limit of 15 days is too short. Where the number of instalments is large there would be a great deal of unnecessary inconvenience to the ryot in having to go through the form of procedure so frequently. If my suggestion as to interest only accruing from the dates fixed by law were adopted, it would be easy to make those dates the starting points from which to reckon the number of days within which the deposit must be made. I should prefer 30 days being allowed.

32. *Section* 56.—I should be glad, if it were possible, to see some provision introduced such as is at present in force in Ireland, viz. one by which the tenant, after ejectment, has a right of re-entry if he pay up all dues within six months.

33 *Chapter IX.*—I do not think the necessity for sections 57 to 60 of this chapter has been proved. The ryot is protected by his privilege of depositing rent, and the provisions of sections 61 and 62 tend to compel coparceners to act in concert. The proposed interference of the Courts in the matter of appointing managers would involve great trouble on the part of Government officers, and would, I venture to think, be generally impolitic.

34. *Section* 72.—Is most necessary, I think, for the protection of the outgoing-tenant, but the words "reasonable rent" are very indefinite, and I do not well see what rent could be fixed by law unless it be a certain proportion of the produce.

35. *On Chapter XI.*—I shall not venture to offer any remarks as it is many years since I have had any experience of Behar.

36. *Chapters XII and XIII.*—Nothing special to remark.

37. *Chapter XIV.*—The abolition of the power of distraint by the landlord, *suo motu*, has been advocated by me for very many years. I know of no procedure which has been

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productive of more injustice, more litigation, or more breaches of the law than the distraint sections of the existing Rent Law. The existence of such provisions is a remnant of feudalism which ought to be got rid of as soon as possible. It is true that in Ireland the landlords have the power of distraining moveable property for arrears of rent, but for many years they have felt that the exercise of such power would expose them to a storm of public obloquy, and consequently the law has been allowed to fall into disuse. It is urged by the British Indian Association that the procedure now proposed will be productive of nearly as much delay as a regular suit, but the objection seems devoid of foundation. If the landlord apply in good time, there is no reason to apprehend any failure in realizing what is due; but as a rule all proceedings are postponed to the last possible moment, and naturally difficulties arise which could easily have been avoided. I am very doubtful indeed whether any such summary procedure is necessary, but it may be well to give it a trial. If the landlords abuse it, there is a remedy in the hands of the local Government. A great deal has been said about the difficulties experienced in the collection of rents. I think they are greatly exaggerated. In the case of saleable tenures there can be but little difficulty, and if occupancy holdings are made saleable the rents due on them can be realized with facility. The landlords have, I think, to a great extent themselves to blame for the obstacles experienced in their collections. Their gomastahs, as is well known, constantly endeavour to realize more than is due. Interest is piled on. Payments are divided between *hal* and *bakaya* in the most perplexing manner. The ryot seldom knows what is still due. Hence the constant struggle. If landlords kept clear accounts, gave regular receipts, and credited all payments fairly to rent, instead of to some flimsy charge, the difficulty of collection would be but small in comparison. As it is, the Courts have had such experience of the chicanery and dishonesty of the whole brood of gomastahs, *et hoc genus omne*, that they place but little confidence on their statements, and are compelled to take every precaution lest the ryot should be victimized. If the landlords and their *amla* habitually acted in such a way as to command the confidence of the Courts, they would not have any reason to complain of undue delay.

38. Looking at the question in this light, I think that the proposed procedure is quite as much as the zemindars have any right to demand. If it is found that applications for distraint are habitually made on account of exaggerated or unfounded claims, doubtless the Legislature will again step in, and no one can say that the landlords have not had their chance.

39. On examining the details of the distraint sections I cannot help observing that the extension of the powers given in section 103 is not unlikely to lead to serious complications. Will it not be well nigh impossible to distinguish between the products of different holdings belonging to the same ryot, or if, as frequently happens, several ryots store their grain in the same granary, will not the difficulty be enhanced? In my opinion this section is a direct encouragement to dilatory procedure on the part of the landlord. If he takes proceedings in time there will be less opportunity for dispute, and the tenant will be less likely to offer factious opposition, but by postponing action till the last moment he not only renders matters more difficult for himself but presents facilities to the tenant to interpose vexatious delays.

40. Before concluding this report, it may be well to call attention to the arguments urged by the British Indian Association in support of their contention that legislation, such as is proposed, is not called for at present. Their main assertions are (first) that the ryots are very well off as they are, and are rapidly improving; and (secondly) that the movement for the amendment arose solely from the necessity of providing a more speedy procedure for the recovery of rent and not from any demand for the improvement of the ryots' *status*. It is hardly necessary to say much in reference to the second of these statements. I need only observe that if the stirring up of the water has resulted in the discovery of more mud than was expected, the zemindars have themselves to thank. On the other point it is to be noted that this vaunted prosperity of the ryot is confined to Eastern Bengal; and what is the cause? Is it not that by force of combination (sometimes illegal) the ryots on many estates have compelled the landlords to abandon the various forms of oppression which had so long prevailed, and even to give up all hope of enforcing such general enhancements as they considered they were entitled to under the law. This state of affairs is surely an argument for action on the part of Government. It cannot be alleged that no steps should be taken to remedy grievances until they have become so unbearable that those suffering from them are driven to acts of illegal violence. The late history of Ireland should serve as a warning. If the relief now proposed had been offered 30 years ago, nay, if half the privileges almost scorned now had been granted in former days, the English Government would not now have to face the evils caused by the uprising of millions of a discontented and impoverished peasantry. If a similar state of affairs were unfortunately to arise in this country, the results would be far more disastrous, and infinitely more beyond Governmental control.

41. It is clearly the duty of Government to prevent the possibility of such a calamity even in the very distant future, and there is no safety in any policy which does not secure to the ryot of Bengal perfect immunity from all attempts to keep him in a state of moral and physical subjection to those who assert their so-called rights as proprietors of the soil.

42. In penning the above remarks, I have not been actuated by any hostility to individual landlords, but I am so convinced of the pernicious tendency of the system that

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I have ventured to urge as strongly as I could the necessity of abating those evils which cannot be entirely removed

43. As years roll on and education spreads, the cultivating classes will feel more and more the position of helpless dependence in which they are placed, and will begin to ask the reason why. Meantime, if repressive measures are not adopted, landlords will have so strengthened their position that an amicable settlement will be impossible, and then many Gordian knots, not to be untied, must be cut without scruple. If landlords understood their true interests they would accept the compromise now offered them. If they don't, the story of the Sibylline books will once more be repeated, and repentance will come too late.

W. H.—Reg No. 1630J—132—18-5-81.

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In submitting to the Lieutenant-Governor the accompanying note as directed in Mr. Mackenzie's letter to my address of the 1st of March, I must explain that I have not considered myself bound to the opinions which I expressed as President of the Commission for the Amendment of the Rent Law.

The points for the consideration of the Commission were so multifarious, the differences of opinion among the members were so numerous (ranging from a gradation of shades to direct contrast), and the difficulty of getting the Report completed before the time at which the members must be scattered was so great that on many points I preferred to give my voice according to the opinion of the moment rather than prolong discussion, being satisfied that the point being so brought forward would meet with full further discussion before the time came for taking action on it; and that I myself should have an opportunity of giving further consideration to it, and of expressing my ultimate opinion after having had the advantage of hearing it so discussed.

Calcutta,
The 19*th May* 1881.

H. L. DAMPIER.

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NOTE

By Mr. H. L. Dampier

On the first twelve Chapters of the Landlord and Tenant Bill (No. II).

As prepared by Mr. Reynolds, with his memorandum of 21st February 1881.

C 6 and 17-18.*
D 6 and 15-16.
Report, page 24.

The twenty years' presumption.

I. (1.) In creating a broad artificial presumption such as that in question to remedy want of actual evidence, the object aimed at should certainly be that the effect of the presumption in the majority of instances shall be the same as would be produced if complete evidence on both sides were forthcoming. I have no doubt that the presumption, as it stands in the existing law and as adopted by the Commission, fails to stand this test. The number of tenants on whom its operation would practically confer the right of holding for all time at fixed rents would not only exceed but would be out of all proportion to the number of those who have *bonâ fide* and substantially held at fixed rents since the time of the Permanent Settlement. I say "substantially" because the voluntary acceptance by the tenants of an estate of additions to the annual payments in the shape of abwabs and illegal cesses in order to escape enhancement of their rent proper is virtually an admission on their part that the amount to which the landlords' demand is so raised is not, in the estimation of the tenants themselves, more than they can reasonbly be called upon to pay; it is also an admission that, whatever the lawyers might find out for them, the tenants themselves do not consider that they have valid rights which they could establish to hold at fixed rents.

I think, then, that the legal presumption is unsound, inasmuch as it is certain on the whole to produce an effect which is altogether different from the intention of the substantive provision of law, of which it affects to assist the operation. In the vast majority of instances, it will create (and indeed has already created new rights) instead of merely establishing those which actually exist but for the support of which full proof is not attainable; in other words, it will detract from what the law recognizes to be the substantial rights of the landlord, and will add to those of the tenant.

Again, the presumption amounts practically to a declaration that, when an

* In these remarks, for convenience sake—
C with a number will indicate the section of the *Rent Law Commission's Draft Bill*
D with a number, the section of Bill II—Mr. Reynolds' Draft Bill.
The Report of the Commission will be referred to as "the report"
And Mr Reynolds' remarks accompanying his Draft Bill as "the remarks."

estate passes to a purchaser from a hostile vendor as at a forced sale, in the majority of which cases no zemindari papers are available to the purchaser, every tenant who has held without change of rents for 20 years shall acquire the right of permanent occupancy at the fixed rent.

Looking at the question in the interest of the tenant and of the public good generally, the argument against the presumption, which is stated by the Commission "that it thus becomes dangerous to allow tenure-holders to remain undisturbed paying the same rent for 20 years, and that zemindars are in consequence forced into litigation lest their rights should pass away *sub silentio*," seems to me to be of the greatest practical weight.

I would therefore require something more than the twenty years' occupation at an unchanged rent, in order to call the presumption into existence; but whether its starting point should be fixed as far back as 1839 is a difficult question.

Against so doing, it may be argued that the importance of preserving evidence by which tenancy at an unaltered rate of rent for a certain number of years can be proved was not realized by the tenants, nor indeed did the importance of so doing exist in the present degree till Act X of 1859 was passed. This would point to 1859 as the year from which the presumption should start.

On the other hand, to take 1859 instead of 1839 as the starting point would, as far as ryots' holdings are concerned, be much more unfavorable to the landlords than is represented by the mere difference of twenty years; for it is since 1859 that the difficulties of the zemindars and the successful opposition to their enforcing even fair and reasonable enhancements of rent have begun to exist.

On the whole I would accept 1839 as being the most likely to bring the effect of the presumption into accord with the actual rights which it proposes to support.

(2.) But the provision contained in exception 2 to section D6 and also to section D16 (that the presumption shall not operate against an auction purchaser for arrears of revenue or rent, or under a decree of the Civil Court) would so enormously increase the existing temptations to proprietors to allow their estates or tenures to go to ostensible sale, for the sole purpose of buying them in under fictitious names, or even to actual sale for the sake of obtaining higher prices from *bonâ fide* purchasers, that I dare not accept it. No doubt the auction purchaser at a forced sale will continue to be placed,

as he now is, at a great disadvantage if the presumption has effect as against him. Having no access to the proof by which the presumption can be rebutted, he will never be able to rebut it; and in an estate which has been sold by auction, every tenant who can prove that he has held since 1839 will acquire the right of holding at a fixed rent. But under the section as altered by Mr. Reynolds, proof of 42 years' tenure at an unchanged rent would even to-day be required to call the presumption into existence, and in the absence of any patent and customary understanding that the rent was so fixed for a definite period only (such as exists when rents of tenants are determined by a Settlement Officer at a temporary settlement of the Government revenue), the mere tenure for 42 years at an unaltered rent seems in itself to give to the tenant a claim to be left undisturbed, which commends itself to the reason.

The selling price of property at auction sales would of course be higher if the presumption were not allowed to operate against the purchaser, but then there would be the anomaly of the former proprietor receiving the money value of a right higher than that with which he was himself vested. The higher price though paid to the former proprietor would represent the value of a benefit taken from the ryots.

I would therefore only bar the operation of the presumption in the paramount interests of the public revenue; in cases in which, an estate being brought to sale by auction for arrears of land revenue, the amount bid does not cover the amount of arrear. In such cases the estate is ordinarily purchased on behalf of the Government. No act or omissions of the private proprietors during their incumbency should be allowed to affect the public right of deriving a full amount of revenue from the land.

C8; D8. Assessment of accreted lands according to capability

II. (1.) The substantive law of property in land gained by gradual accession is contained in Regulation XI of 1825. Clause 1 of section IV provides that "It shall be considered an increment "to the tenure of the person to whose land "it is thus annexed; but such person "shall not be considered exempt from the "payment of any increase of rent to which "he may be justly liable."

The object of the present section of the Bill is to lay down a principle for determining to what increase of rent such person is justly liable, in the absence of any contract.

I understand the last five words to be tantamount to "he would have been "justly liable, if this Act had not been "passed," and to save the assessment of additional rent from being affected by any words in the Act, except as regards the person to whom it is payable.

The alteration made by Mr. Reynolds in the section as drafted by the Commission raises the question whether such land shall be assessed with reference to the general rate of rent, favorable or otherwise, at which the tenure is held, or at a fair rent according to its assets.

The same law which provides that such land shall pay rent also provides that "the "increment of land thus obtained shall "not in any case be understood to exempt "the holders of it from the payment to "Government of any assessment for the "public revenue to which it may be lia-"ble" under the laws in force.

(2.) How is the law applied as regards the assessment of the public revenue, and what is the analogy to be drawn as regards rent?

Under the provisions of the existing law, land added even to a permanently-settled estate (and the very piece of land now in question if it has been added to the estate since it was created) is liable to assessment with a revenue according to the rules in force for assessing alluvial increments, or in other words at the full amount which would be assessed on the same land with reference to its actual rent-paying capability if it were part of a temporarily-settled estate.* No consideration is given to the fact that under the existing settlement of revenue the parent estate is held on payment of an amount of revenue far below that which would now be assessed on its present assets, if it were to come under settlement. Why then should a different principle be applied to the assessment of the rent out of which perhaps the very revenue assessed as above is to be paid?

Recently a temporarily-settled estate belonging to a minor zemindar under the Court of Wards came under re-settlement of the land revenue. It was found that the zemindar had created a permanent tenure of the estate at a fixed rent considerably below the amount of revenue which was assessed on the estate by the Settlement Officers. It so happens that in that case the very question of liability to assessment of an increment to the tenure arose. The zemindar was there bound by the express terms of the contract creating the tenure, and was therefore obliged to put up with the loss of paying more revenue

* Clause 1, section 4, Regulation XI of 1825—
The increment of land thus obtained * * * shall not in any case be understood to exempt the holder of it from the payment to Government of any assessment for the public revenue to which it may be liable under the provisions of Regulation II of 1819, or of any other Regulation in force.

Clause 1, section 3, Regulation II of 1819 declares that all lands not included in any settlement "shall be considered liable to assess-"ment in the same manner as other unsettled mehals," and clause 2 of the same section makes the above principles applicable "generally "to all lands gained by alluvion and dereliction since" the period of the decennial settlement.

The Procedure Act, IX of 1847, provides that land added to an estate shall be assessed "with a revenue payable to Government "according to the rules in force for assessing alluvial increments."

The rules in force on that behalf are clause 8, section XII of the Board's settlement rules, to the effect that such land, shall be assessed "in the same manner as other unsettled mehals," and the instructions contained in sections V and IX of the same rules.

than the rent which he received from the tenure-holder; but it is very undesirable to extend this anomaly to any lands regarding which no such express contract has been made,—to lands the possible future existence of which did not even occur to the contracting parties. The normal condition of things is that land pays a full ryot's rent to the zemindar unless he has alienated some portion of his interest therein; where he has not by anticipation deliberately divested himself of this right in respect of land which may accrete to a tenure,—where the normal position as between the parties has not been intentionally interfered with by contract,—why should it not be maintained as far as possible?

(3.) On these grounds I prefer the principle of taking the rent-paying capability of land accreting to tenures as the measure of assessment, in lieu of the area only as proposed by the Rent Commission.

I understand that a Division Bench of the High Court has within the last few days decided that the intention of the existing law is that the general amount of rent payable on a tenure shall be the measure of the enhancement of rent payable on account of an increment to the tenure. But I have very little doubt that the framers of the existing law had no considered "intention" on the point; and that any decision of the Courts must virtually amount to legislation instead of construction of intention.

(4.) One practical advantage of the principle of assessment according to capability over that of the Commission's Bill is that the necessity is avoided of ascertaining the actual area, perhaps of an extensive tenure consisting of many scattered villages, before the rent to be paid for a comparatively small increment can be determined. Rather than provide that the increase of rent on account of an increment added to a tenure shall be calculated at the customary rate "payable by persons holding under-tenures in the vicinity," &c., as in Bill II, I would lay down that the increase of rent should be equal to the full amount of rent which might be paid for the land if it were occupied by ryots without special privileges, less a deduction from 10 to 20 per cent. to compensate the tenure-holder for the risk and trouble of collection; in fact, I would give the tenure-holder a farmer's interest only in such land; and even so he would get more than he anticipated or took into account when he contracted with the zemindar for the transfer to himself of a certain portion of the zemindar's right and interests.

(5.) The question unfortunately is not exhausted when it is decided on what principle the additional rent payable "for land added to a tenure" shall be assessed.

What is land added to a tenure?

It is very important to express clearly what is meant by "land added to a tenure." The expression opens out all the difficulties which have been found in construing it in respect of land liable to assessment of land revenue under Act IX of 1847 as having been added to estates.

I would make a tenure liable to increase of rent as above for land newly added to it by accretion, unless the tenure-holder can show that such land has reformed on a site which was occupied by land belonging to his tenure at some previous time.

If the tenure-holder can show this, the burden of proof should be shifted and the zemindar before he is allowed to increase the rent should be required to prove that the land was not in existence and did not form a part of the tenure when it was originally created, or that if it did then exist, the tenure-holder has been allowed a reduction from his rent in consequence of land having diluviated from this site.

(6.) As to the measure of abatement from the rent of a tenure on account of diluviated area, it must be borne in mind that, although in the cases which are the subject of the section, there was no express contract entitling the tenure-holder to abatement of his rent on account of diluvion, yet the amount of rent payable on the diluviated area was the subject of the contract, whether written or verbal, which called the tenure into existence (as the amount of rent to be paid on account of future increments was not). It seems impossible to fix any equitable measure of abatement on account of land so lost without reference to the incidence of the rent paid for the whole tenure on its whole area.

Abatement of rent for diluvion.

I would therefore accept Mr. Reynolds' rule for determining the amount of rent to be abated, but in view of the extreme difficulty of proving the assets of land which is no longer in existence, I would retain a provision that in the case of diluvion, in default of such satisfactory proof as would enable the Court to determine what amount of rent "would bear the same proportion to the rent previously paid as the diminution of the total assets bears to the previous total assets of the tenure or under-tenure," the abatement allowed should bear to the rent previously paid the same proportion as the area lost bore to the previous area of the tenure or

under-tenure. This would exactly follow the analogy of the Government revenue (section 5, Act IX of 1847).

In these cases, I do not see how the necessity of ascertaining the entire area of assets of a large tenure is to be escaped if the tenure-holder insists on claiming an abatement of rent to which the zemindar will not agree. But, as in the case of estates, one powerful deterrent will operate to make large tenure-holders hang back from claiming abatement of rent where the loss from diluvion does not really bear hardly upon them, *i.e.*, the tenure being probably held at a light assessment of rent, the amount to be abated would be a light rent on the diluviated land, but to claim or accept this abatement of a light rent will render the tenure-holder liable to pay a full rent on any land which may in future reform on the site of the diluviated land. Experience shows that rather than expose themselves to this liability, holders of land prefer waiving their right to abatement on account of diluviated areas.

(7.) No doubt imaginary and indeed actual cases may be brought forward in which the rules as above proposed would work hardship; but I cannot suggest any scheme which would not be open to objections at least as great. It is something to follow the principles which are applied to the Government revenue under similar circumstances.

C9 D9. **Enhancement of rent of tenures.**

III. The powers of Settlement Officers are saved throughout the Bill by clause *b* of section 4, and therefore the words "or in any case falling within the exception to section 6," which in the Commission's draft followed the words "where no such customary rate exists," have been omitted by Bill No. II. But I may notice that it is probable that this law will create other circumstances besides a settlement of land revenue under "which the customary rate payable by persons holding similar tenures in the vicinity" should not be taken as a limit to the enhancement to which a tenure-holder is liable. The customary rates on tenures will presumably be in relation to the "customary" rates which have been paid by ryots to the tenure-holders, but the scheme of the present Bill is to give to landlords facilities of enhancing their ryots' rents above these customary rates, if insufficient, to fair and equitable rates, by the preparation of authoritative Tables of Rates, even in cases in which no settlement of Government revenue is going on. Whenever the tenure-holder gets this artificial assistance in raising the ryot's

rent he certainly should not himself be protected by the limit of customary rates.

The Famine Commission have suggested that no enhancements shall be allowed in temporarily-settled estates, except at the time of settlement of the Government revenue; and that, similarly, rents in permanently-settled estates shall also be made liable to enhancement at certain definite periods only, at which times all rents might be adjusted by Settlement Officers.

In connection with a report which I am now submitting from the Board to Government regarding settlement procedure, I am considering a suggestion that if these proposals for the operations of executive officers in assistance of enhancement in permanently-settled estates at stated periods are adopted, they might be supplemented by the appointment of special Rent Courts exercising jurisdiction for a certain time at such periods, to settle individual rents. This would apply to tenure-holders as well as to ryots' rents.

These proposals cannot, however, be worked out until the scheme of the present Bill, as regards facilities of enhancement to be given by the action of the executive, is before us.

Margin of profit to be allowed to tenure-holders

IV. In the latter part of the section I should prefer to have retained 30 per cent. as the maximum, so as to give room for the exercise of the settling authorities' discretion, in view of the varying features in the histories and characters of tenures. C 9 D 9

Limits to enhancement

V The Commission's section presumably, and Mr. Reynolds' section professedly, are intended to give effect to the reasoning in paragraph 61 of the Commission's report On comparing these sections which apply to tenure-holders with the corresponding sections* which apply to ryots, it will certainly be construed that tenure-holders are protected by the maximum of double rent even in cases in which the enhancement is owing to their encroachments and cultivation of excess areas; but section 61 of the report gives excellent reasons against making this maximum applicable to enhancements on the ground of increased area; the ryots' sections expressly exclude such enhancements from its operation; and indeed in view of the character of numerous classes of tenures in which it is almost a matter of course that the tenure-holder extends his reclamation far into the waste land by which his original tenure is surrounded, the limitation is altogether inapplicable to the enhancement of the rent of tenures on that ground. The tenure-holders' section should C 10: D 11.

* C 23 (b) D 23 (b).

C 10: D 11.

in this respect be assimilated to the ryots' section.

Rate from which the period of ten years for which rent is fixed shall run

VI. I prefer the Commission's "from "the date of the final "order" to the alteration made in Bill No. II "after the date on which such "enhancement took effect."

C 11, omitted in Bill II

Distinction between tenures and ryots' holdings

VII. In sections 13 to 22 of the report, the Commission have fully explained the difficulty which, as the law now stands, exists (in the absence of specific conditions in the original lease) in distinguishing between tenure-holders and ryots. The law, however, attaches very different incidents to the two classes; and in practice the difficulty is met with at every turn.* I think it a matter of very great importance to lay down some rule (short of an actual appeal to the Courts in each case) which shall serve as a guide as to the distinction between a tenure and a ryot's holding. There is no natural and obvious distinction: any rule must be arbitrary. The Commission framed their rule as the best which occurred to them; a better line of distinction may likely enough be devised; if the section which Mr. Reynolds in his remarks proposes to introduce in the procedure portion of the Bill, indicating the principle by which the Courts should be guided in determining the distinction, is effectual for establishing a perceptible distinction which shall enable the parties interested to judge what the probable decision of the court would be (without actually appealing to it), I shall probably have no objection to the proposed omission of the Commission's section 11; but I would not omit it unless some section is substituted which shall effectually mark the above distinction in cases which would otherwise be doubtful.

* For instance, see the section of the Distraint Chapters of Bill II, under which the crop of a ryot is liable to distraint for rent: not so that of a tenure-holder.

The history of the settlement of the Government estate Balarampore in Midnapore, as given in the annexure to the Board's report to Government on the subject of the modification of the proceedings of Settlement Officers by the Civil Courts (already quoted above) shows the disastrous effects which may result to all concerned from the existence of doubts as to what class in any given series of rent-payers really occupies the position of ryots as protected by the law.

D 16.
Exception 2 to D 19.
D 17.

The twenty years' presumption in favour of ryots

VIII. The remarks made upon the corresponding section in the chapter relating to tenure-holders will apply.

C 19.
D 19-20.

Conditions of the right of occupancy.

IX. (1.) Whether the Legislature shall go beyond Act X of 1859, and shall attempt

to restore to the right of occupancy as far as is practicable under existing circumstances, a resemblance to the customary privilege which attached to khudkasht ryots at the time of the Permanent Settlement, has been sufficiently discussed;* and it remains for final authority to decide the question. If it be decided in the affirmative, I would attach the following conditions to the character of the "settled ryot" which, *ipso facto*, creates a right of occupancy.

In the case of one who may settle after the passing of the Act in the habitation which is the germ of his occupancy right—

(*a*) That such habitation is within the same estate as the lands in which he claims the right of occupancy.

(*b*) That such habitation is included by the Revenue Survey in the same village hulkah as the said lands, or if not so included, that it is within a distance of two miles from some part of such lands.

As regards a ryot who is found settled when the Act is passed, the corresponding conditions would be—

(*a*) That at the time when he so settled in his present habitation, it was within the same estate as the lands in which he claims the rights of occupancy.

(*b*) That at the said time, the habitation was included by the Revenue Survey in the same village hulkah as the said lands, or if not so included, that it was within a distance of two miles from some part of such lands.

If the ryot had settled in his habitation before the estate had been subjected to mouzahwar survey, the test should be whether the habitation was included in the same village hulkah at the first survey which was subsequently made.

After much consideration I would accept for this purpose the village hulkah or contour as adopted by the professional survey. It is a well known and easily ascertainable unit, and I would deliberately accept for practical reasons the theoretical inconsistency which must attend the exceptional cases in which the lands of several villages (being undistinguishable or for other reasons) have been surveyed into one hulkah or contour.

Bearing in mind that the idea is to rehabilitate the khudkasht ryot, such conditions as these would escape the indefensible novelty of bringing within his privileges pykashts who never were residents of the estate in which the lands are situated.

* Mr. Mackenzie, at paragraph 11 of his remarks, which are printed at page 113 of the first part of the Commissioner's report, has correctly represented my own views "Their views of the necessity of upholding Act X prevented Mr. Dampier and Mr. Field from also concurring" (*i.e.*, in the proposal to give occupancy rights to every settled ryot) "though I believe apart from that Mr. Dampier was inclined to favor the proposal."

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They would also avoid the objection of conferring on absentees, who have the status of cultivating ryots in the eye of the law but who may actually reside at a distance of many miles from the lands in question (which they may cultivate through korfa or under-ryots), a privilege and status of which the essence is residence in close proximity to the lands cultivated.

(2.) I was about to write that it should be made clear that a change to a habitation which does not fulfil the above conditions will forfeit the right of occupancy; but this brings me face to face with the question of transferability of these holdings.

(3.) Any scheme which professes to aim at the revival of a right on the model of the old residential tenant-right of the khudkasht ryot of the Permanent Settlement, and then to combine with it a free right of sale in the open market according to approved modern ideas, can scarcely escape being regarded by its opponents as the junction of a horse's neck to a human head; but in Bill No. II as it stands drafted, the violence of the contrast between the somewhat feudal character with which the right of occupancy is clothed as long as it is vested in the tenant who first acquires it in any given land, and the very ordinary commercial character of a freely marketable commodity which it assumes as soon as the first holder wishes to transfer it, seems to me to be so great as to make the two parts of the scheme hopelessly incongruous.

If residence is to be of the essence of the acquisition of the right, I cannot see why that condition should be set aside immediately the right been acquired.

If a non-resident may acquire a holding with a right of occupancy by voluntary transfer from a resident ryot, I can see no reason why residence rather than occupancy of the lands for a given number of years is to be the essential condition of the acquirement of that right in the first instance.

As the Bill stands, although the idea of a right of occupancy is connected with residence, it will happen under circumstances which are not difficult to foresee that in a given village all the lands are held in occupancy holdings by distant non-residents, not an acre being left for the actual residents.

The free transferability of rights of occupancy accruing under the condition of Act X of 1859, to which I

agreed on the Commission, and earlier, presented no such incongruity.

(4.) If the right of occupancy is identified with residence, it naturally suggests itself that voluntary transfers at any rate should be allowed to such persons only as are by residence qualified to be vested with the right as to the lands in question.

Disability to contract out of right of occupancy.

X. (1.) Whatever may be done as to future contracts, I am opposed to declaring past contracts legally made to be invalid. I give an instance from my experience in the Court of Wards. Certain ryotti lands became available for lease; a planter, resident on the estate, wished to take them for the cultivation of indigo; for the present it was an advantageous and unobjectionable offer, but in view of the strong feeling against letting their lands for indigo which is entertained by some native zemindars, I was unwilling to establish the cultivation in the village in such a way that the minor zemindar cannot get rid of it if he chooses, when he enters upon the management of his own affairs, so I directed a lease to be given, terminable with the minority of the ward.

This was essentially a cultivation lease, and the planter became a ryot.

If the Bill as drafted becomes law, the precautions deliberately taken by the Court of Wards will be frustrated; and there must be innumerable instances in which the unobjectionable exercise of his legal right of contract by landlord will be no less unjustifiably interfered with.

If the law prohibiting future contracts against the acquisition of the right of occupancy had been in force when this tenancy was created, it would have been impossible for the Manager of the estate and the planter, even if they wished to act in unison, so to arrange and agree that the planter should enter upon the lands at all otherwise than with a permanent right of occupancy.

Whenever a zemindar might wish to let available lands for a term of years only to a cultivator, he would have to seek a "pykasht" or non-resident temporary tenant.

I am not inclined to depart from the clause as drafted by the Commission as to the effect of contracts on rights of occupancy.

Right of pre-emption.

(2) A section has been introduced into the Registration chapter giving the landlord the right of pre-emption in occupancy holdings. This materially affects the character of the proposed legislation as far as the landlord is concerned. The Commission

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rejected the proposal. I was opposed to it because the only experience which (as I believe) we have of such a right is the huqshuffa of the Mahomedan law. I understand that the exercise of the right is most difficult to enforce practically, and that the law leads to endless chicanery and fraud on both sides. If these practical difficulties could be overcome, and efficient means could be devised for giving the landlord an easily asserted right of pre-emption, without detriment to the vendor, I should be much inclined to give it; but then it must be clearly laid down what the effect of such purchase by the landlord will be. Will the purchase convert the land into khamar or domain land absolutely at the disposal of the landlord, which he may let to any tenant, even to a resident tenant, "for a term or year by year" without the acquisition of a right of occupancy by the tenant? or will it still be non-khamar land on which the landlord himself cannot acquire a right of occupancy (D 18, explanation 3); but in which any "settled" ryot will acquire such a right immediately he can get hold of the land, contracts notwithstanding. In the latter case, the right of pre-emption will not be of much value to the landlord.

The question has not, I think, been discussed out. It would be well to watch how pre-emption and the right of veto on transfers is worked out in Mr. Gladstone's Irish Bill now before the Parliament.

Mortgage

(3.) I do not see the advantage of allowing a holding to be mortgaged if it may not eventually be sold in satisfaction of the mortgage.

This security being withdrawn, a higher rate of interest on the loan will certainly be demanded.

The mortgagee's security will apparently consist in the right to take possession of the tenure, and to recover the money lent from its annual profits; such a system actually prevails in the Khorda estate in Pooree; but the effect must be, instead of disconnecting the ryot from any interest in the land, to keep him, the ostensible occupancy ryot, on the land as a rack-rented tenant of the mortgagee in possession, and that for the indefinite number of years which it requires to pay off a mahajan's loan with its accumulating interest.

If it is considered impracticable to prohibit mortgages altogether (and there is much to be said on both sides), I would allow sale in satisfaction of mortgage, the charge being second to that of rent.

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XI. I would at any rate word this section so as not suddenly to reduce existing rents. The section as it stands would immediately raise the question, whether the ordinary maintenance of the small bunds of a village, which under the name of gilandazi, bheri-bandi and so on is commonly done by the zemindar in parts of South Behar, in the Midnapore district and elsewhere, for the benefit of the ryots of a village in general, is such "other assistance in producing the crop" to the individual ryot as places them beyond the protective limit of this section. This should be made clear. C 21. D 21.

Maximum limit to rent in kind.

II. I do not see that this clause as drafted by the Commission is open to the charge of inconsistency with clause (*c*) which Mr. Reynolds points out. The "value of the gross produce" to one-fourth of which clause (*c*) limits the rent includes the cost of production; the one-half of the unearned increment which clause (*a*) allows the landlord to take is presumably all profit from the use of the land. D 23 (*a*).

Landlord's share of unearned increment.

XIII. As Bill No. II now stands drafted, the last sentence of the third paragraph of this section has no meaning, time not being one of the conditions necessary to the character of a "settled ryot." D 28.

Time during which a tenant-at-will hold on after notice to quit.

XIV. I have no objection to retain the section as having a tendency to check sub-letting on excessive rents; but I have no hope of its success. D 30.

Limit of rent of under-ryot.

XV. In draft Bill No. II these sections are omitted. But then what remains is incomplete, as the Bill does not declare what results will follow if a ryot disobeys the prohibition contained in D 31 against converting agricultural land to other purposes. I would by all means retain clause 2 of C 40. C 37 to 40.

Conversion of agricultural land to building purposes.

XVI. I have already remarked on this above. D 38.

Landlord's right of pre-emption.

XVII. In this, as well as the following sections which provide for the payment of registration fees at penal rates, the rate of fee by calculation will press more than three times as hardly on holdings as on tenures. The minimum of one rupee will, moreover, regulate the amount of fee on all holdings of which the annual rent is below Rs. 32; and on the smaller tenures the penal minimum of Rs. 10 will bear very heavily even as a penal rate. I would at any rate reduce the penal minimum considerably.

Registration fee.

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D 44. Failure to register

XVIII. After the words "in section 37," occurring in line 7, should be introduced words saving the operation of D 38.

D 45 Security from tenure-holders

XIX. The right of the landlord to demand security should certainly be extended to cases of succession by will, and perhaps to succession by inheritance.

C 56 D 48. Interest on arrears of rent

XX. I would leave a discretion to the Court to remit the interest on arrears of rent for special reasons. As a fact (notwithstanding the "sunset law") zemindars very frequently fall into arrears of revenue. Payment of the arrear is enforced by sale in a very small percentage of cases; whether so enforced or not, no interest is charged on the arrears.

D 47 (b). Dates of payment

XXI. I would reserve to the Government a power to substitute other dates of payment for those specified in the section.

D 49. Receipts Credits of payments to rent of current and past years

XXII. (*a*) The receipt is to contain mention of "the instalment and year on account of which the payment of rent is admitted to be made."

These words seem to assume that the landlord may always determine to the credit of what year or of what instalment any given payment of rent shall be carried. Much practical difficulty has lately arisen on this subject. If a dispute exists as to the amount of rent which was payable in 1880 (the tenant having paid say Rs. 100 which he considers to be the full amount for which he was liable in that year, while the landlord claims Rs. 125), the question will come to issue on the occasion of the first rent payment which the tenant makes (say of Rs. 25) in 1881. The tenant will wish to have it credited to the rent of 1881, and if he is well advised, will pay it in with a chalan to the effect that it is a payment of rent of the current year 1881 (hal). The landlord will wish to carry it to the credit of the year 1880 (bakiya) in payment of the amount which he still claims to be due on account of that year.

If the principle of sections 59 to 61 of the Contract Act of 1872 are to be applied, and rent due on account of each separate year recognized as a separate debt, it is at the option of the payer to elect to the credit of what year he will have his payment carried.

If he fails to elect, and if circumstances do not sufficiently indicate his wishes, but in that case only, the payee may elect

to what account he will credit the payment.

On the other hand, there are existing decisions of the High Court which recognize that if a landlord credits a payment to the rent of the current year, it creates a presumption at least against him, (though it is rebuttable) that no arrears of rent were then due from the payer for any previous period; and there is a very recent decision that a suit for the recovery of any arrears of rent having once been instituted, no further suit can be instituted for any amount of arrear which was due at the time of such institution, whether such amount was due for a period antecedent or subsequent to that on account of which the arrears sued for had accrued due. This decision indicates that the arrears due on account of two or more years are to be looked upon as one debt; and that the rent of each year is not a distinct debt so as to bring the question under the operation of the sections of the Contract Law above referred to.

Out of this point complicated difficulties have arisen in making up the accounts of each ryot in estates which have been taken over by the Court of Wards, with pending disputes as to the rates at which rents were payable in some past year, the eventual question being whether subsequent payments could be carried to the credit of the year of dispute, so leaving no balances due except such as could be recovered by suit, as being due on account of more recent years; or whether the payments made in years subsequent to the year of dispute must (even in the event of the landlord's claim to the higher rate of rent for that year being established) be carried to the credit of the years in which they were actually made, so leaving large balances outstanding on account of the year of dispute of which the recovery was barred by limitation.

It would be well if these sections were to declare distinctly the rights of the parties on this point, and how the terms of the receipt given and of the final annual account should be regulated in this respect.

Particulars to be stated in receipt.

(*b*) The provisions of D 49 will bear very hardly on small landlords at first, and will probably be taken advantage of [especially 49(*d*)] by strong tenants who understand business to over-reach their less astute and more ignorant landlords; but the giving of receipts must be enforced, and the liability to, or even the certainty of, such

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abuse of the section during the early years of its operation will perhaps be a less evil than the universal neglect of the obligation to give proper receipts.

Counterparts.

(*c*) It does not appear to me that there is sufficient weight in the reasons given by Mr. Reynolds for omitting the obligation which the Commission had imposed on landlords to keep the counterparts of receipts. The Court would be at liberty to give no more weight than the corroborative circumstances justified to such obviously dangerous evidence, except as against those who produce it

Presumption from not specifying the instalment in receipt

(*d*) If any provisions are introduced as suggested under it, (*a*) above, it will probably be found possible to mitigate the presumption of this clause. As it stands it is very dangerous to innocent and well meaning landlords.

D 50.

Right to deposit

XXIII. Looking to the unrestricted right of depositing rents which the section gives to ryots, it will be wise to reserve to the Lieutenant-Governor the power of suspending the operation of these sections as to any given tract; otherwise I should fear that the administrative machinery might be overwhelmed by sudden influx of deposits.

D 56 (*b*)

Prior claim of landlord on sale-proceeds for rent

XXIV. It is useless discussing this important question at this stage.

Prohibition to sublet.

XXV. I believe that the first clause of the new section will be entirely ineffectual to prevent ryots from underletting. The second clause as to distraint is desirable.

C 79, clause 3
D 71, clause 4.

Abandonment of non-transferable holdings

XXVI. The Commission's clause reserving to the tenant a right of re-occupying his holding until he has been absent from the neighbourhood for a year is rather hard on the landlord, while the corresponding clause of Bill II allowing the landlord to take immediate possessio at his own peril entails some danger to the ryot. Perhaps a middle course and a minimum period of six months would be best. If the ryot omits to pay his instalment of rent for that time, he does to some extent give color to the assumption that he has finally abandoned the land from which he has absented himself.

C 75.
D 67.

Measurement of lakhiraj holdings by zemindar.

XXVII. I approve of the power given to landlords by Bill II to measure lakhiraj holdings.

C 77.
D 69.

Improvement.

XXVIII. Neither of the conditions added in Bill II commend themselves to me. The provision of clause (*b*), section 10 of

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the Commission's draft, as to the right in trees has well been omitted.

C 78. Omitted in D

XXIX. I would not omit this section, but I would meet the difficulty mentioned by Mr. Reynolds by making it clear that a general notice is sufficient.

Tenant's liability for rent to a transferree landlord

XXX. I wish to defer making any comments on the special provisions which have been proposed for Behar until I see the remarks which I understand that the Behar Landholders' Association is about to send in or has sent in to Government on Bill No. II. I have always thought that the mode in which the Rent Law Commission dealt with Behar was the least satisfactory part of their work.

Bill II. Chapter XIII. Behar.

Behar.

XXXI. I took part in the consultations on which this chapter was framed.

Bill II. Chapter XIV. Distraint.

Distraint

As D 101 now stands drafted, it allows the landlord to proceed against "any cultivator" by distraint, and so it is in conflict with D 56 (*a*), which expressly provides that the landlord shall not be entitled "to resort to any other process" for the recovery of rent due on an occupancy holding until he has first brought the holding to sale;*

therefore either D 101 should be expressly saved in D 56 (*a*);

or, if, as is perhaps intended, the right of proceeding by distraint is meant to be exercised against those few ryots only who will remain without a right of occupancy, this should be expressly declared in D 101.

Whichever course is adopted, there is a phase of consequences which I do not think has attracted attention.

If the landlord may proceed against *any* cultivator or ryot by distraint, the question of "tenure-holder or ryot" is likely to be raised in the doubtful cases by the landlord's act of distraint.

If, on the other hand, the right of distraint can only be exercised against ryots who have no right of occupancy, a temptation will be held out to the landlord (in doubtful cases such as exist under the present law) to distrain the crop of the defaulting ryot in the hope that the ryot's omission to institute a civil suit to contest the proceeding would be taken as his admission that he had no rights of occupancy.

The force of this objection will depend entirely on the conditions on which the new law may found the right of occupancy.

It should be expressly provided that the extent of the crop or the quantity of

D 150.

* It may here be observed that unless the definitions in the Bill are to include the holding of a mokurraree ryot in the definition either of a tenure or of an occupancy holding, this class of holding has escaped mention in D 56 (*a*).

the produce attached shall be in reasonable relation to the amount claimed.

So much discretion must necessarily be left to the official who is deputed to distrain and sell, that I think it will be impossible to entrust the duty to the ordinary body of pyadahs. The old question will therefore rise again as to the agency through which sales at any rate, if not the actual preliminary distraint, shall be made.

Power to make rules.

XXXII. But in all probability the want of authoritative rules regulating the working of this chapter will be felt on more than one point. I would give a general power to the Government or to the Board of Revenue to make rules (not being inconsistent with the law) which shall bind all concerned. Section 99 of the Bengal Irrigation Act III of 1876 is a good model section for the purpose.

BOARD OF REVENUE, *Calcutta*, *May* 19*th* 1881. } H. L. DAMPIER.

W. H.—Reg. No. 3931J—128—15-7-81.

TO

THE HON'BLE A. MACKENZIE,

Offg. Secy. to the Govt. of Bengal,

Revenue Department.

SIR,

I HAVE the honor by desire of the Committee of the British Indian Association to acknowledge the receipt of your letters Nos. $\frac{2327}{1331 \text{ L. R.}}$ and $\frac{516}{210 \text{ L. R.}}$ dated 9th July 1880 and 23rd February 1881 respectively, inviting the opinion of the Association on the provisions of the two Bills now before His Honor the Lieutenant-Governor for the amendment of the Rent-Law.

2. The subject of the correspondence has been under the consideration of the Association since the receipt of the Bill of the Rent Commission in July last. On receiving the first requisition of Government dated the 9th July 1880 the Committee resolved to consult their constituents in the Mofusil and others interested in land. They addressed them as well as the Landholders' Associations in the interior a circular together with a synopsis of the changes contemplated by the draft Bill of the Rent Commission in both English and Bengali, inviting their co-operation and expression of opinion either through properly organized public meetings in their respective districts or by representations to Government. As many persons interested in the question were not conversant with English, the Committee suggested to Government the propriety of publishing the translations of the report and the Bill of the Rent Commission in the vernaculars. The Government has been pleased to comply with this request.

3. Great interest has been evinced in the Bill by the landholding class in the Mofusil. The Behar Landholders' Association took the lead and held a public meeting for the discussion of the subject; as the result of their deliberations they have submitted to Government a memorial with an elaborate note commenting in detail on the provisions of the Bill. Their example was followed in other districts. The East Bengal Landholders' Associaton and the Rajshaye Association held meetings and criticized the Bill; their criticisms are contained in the representations they have submitted to Government. Public meetings were also held in the districts of Hoogly, Nuddea, Backergunge, Mymensing, Chittagong, Dinagepore and Bhaugulpore. The Committee received from many landholders their individual opinions on the provisions of the Bill. The interest thus manifested was general and wide.

4. In the meantime the Committee noticed that the Government had commissioned the Hon'ble H. J. Reynolds to visit some of the principal districts of Bengal and Behar with a view to consult the local officers and landholders on the subject of the Bill. Accordingly Mr. Reynolds held conferences at Bankipore, Dacca, Hooghly, and one or two other places. It was given out at these conferences that the Lieutenant-Governor was not pledged to the Bill of the Rent Commission, and that His Honor would be prepared to modify the provisions of the Bill in the light of the criticisms and suggestions that may be submitted to him. Believing, however, that it would simplify their labours if the Committee could obtain a statement of the views of His Honor, so far as they might have then been formed, as to the points to which he might wish to restrict the proposed legislation, they took the liberty to address you their letter

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of the 9th December last, in reply to which you were good enough to indicate the course which the Lieutenant-Governor proposed to take with reference to the Rent Bill. Although it was stated that the Government " was not yet in a position to state precisely the modifications in the draft measure prepared by the Rent-Law Commission," still it was said generally that " the Lieutenant-Governor has no doubt that it will be possible to simplify very considerably both the substantive and the procedure portions of the draft Bill." Accordingly certain important points were indicated, regarding which the views of the Lieutenant-Governor were generally stated and the opinion of the Association was also invited.

5. On the receipt of this communication the Committee thought that the best way of dealing with it would be to consider the proposals of His Honor at a general conference of landholders, and they accordingly invited a Conference of landholders at the rooms of the Association, asking them to be present either in person or by delegates. They have the satisfaction to state that their invitation was readily responded to throughout the Mofussil. The following statement shows how the different districts were represented at the Conference :

Behar.—The Hon'ble the Maharaja Luchmessur Singh, Maharajah of Durbhanga, Munshi Mahomed Amir (Patna); Babu Saligram Singh (Shahabad) ; Babu Joyprokash Lal (Dumraon) ; Babu Surja Narayan Sing (Bhaugulpore) ; Babu Hurbans Sahai, Honorary Secretary, Behar Landholders' Association ; Babu Umachurn Dass, delegate of Roy Sham Lal Mittra, Gya.

East Bengal.—Babu Purnochunder Banerji, Secretary, East Bengal Landholders' Association ; Babu Kalli Prosunno Ghose, Manager, Bhawal Estate ; Babu Gopal Chunder Chatterji-delegate of Babu Gobind Chunder Roy, Dacca ; Babu Gobindo Chunder Dutt, Dacca ; Furred-duddin Ahmed, and Newab Mir Mahomed Ali, Furridpore ; Babu Mokund Nath Roy, delegate of Babu Dwarka Nath Roy, Mymensingh ; Mr. P. L. Roy, Secretary, Burrisal Landholders' Association ; Babu Luckhi Kant Roy, delegate of Babu Keshub Chunder Sanyal Chowdhry Mymensing ; Babu Girja Sunkur Mozumdar, for self and delegate of Babu Shamsunker Mozumdar, Furridpore ; Babu Biressur Das, delegate of Golam Ali Chowdhry, Backergunge ; Babu Dijendra Nath Sanyal, Pubna.

North Bengal.—Rajah Promotho Nath Roy Bahadur, Dighapati ; Babu Raj Mohun Sircar, Secretary, Rajshahye Association ; Babu Tara Nath Chowdhry, Lahore ; Babu Kali Kissore Munshi, Bogra ; Babu Chandra Kishore Munshi, Bogra ; Babu Mothura Nath Roy, delegate of Babu Rummoni Mohun Roy Chowdhry, Rai Bahadur, Rungpore ; Babu Brojo Nath Bhumik, delegate of Babu Luchmun Chunder Giri Gossain, Bogra, Babu Bepinchunder Sanyal, Bogra ; Babu Sosodhur Roy, delegate of Raja Kristendranath Roy, Bolihar, Rajshye.

Chittagong.—Babu Okhil Chunder Sen, delegate of the Chittagong Association.

Sylhet.—Babu Joygovind Shome, for Sylhet Zemindars.

Nuddea.—Rai Jadunath Roy Bahadur, Babu Porsunnochunder Roy, Babu Nuffurchunder Pal Chowdhry, delegates appointed at a public meeting ; Mir Mussurruff Hossein, Kushtea.

Jessore.—Mr. J. H. Rainey, Moulvi Abdul Huq. Babu Kunjolal Mukerji, delegate of Babu Gobind Chunder Roy, Nurral.

24-Pergunnahs.—Babu Boikanto Nath Bose, Boroe ; Babu Charuchunder Mullic, Babu Dwarka Nath Mukerji, Babu Ashutosh Dhur.

Murshedabad.—Babu Grish Chunder, delegate of Babu Ramdas Sen ; Babu Manik Chunder Chowdhry, delegate of Rajah Jogendra Narayan Roy, Lalgola.

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Hughly.—Babu Rajendra Narayan Nundy, Shagunge ; Babu Nundlal Gossain, delegate of babu Gopi Kisto Gossain, Serampore ; Babu Bejoykissen Mokurji, Otterparah.

Midnapore.—Babu Ashutosh Dhur, delegate of Kumar Mohender Nath Khan.

Orissa.— Babu Nemy Churn Bose, Rai Bahadur, Balasore.

Sonthal Pergunnahs.—Babu Manikchunder Roy, delegate of Maharajah Gopal Singh, Mohespore.

Calcutta.—The Hon'ble the Moharajah Jotendra Mohun Tagore Bahadur, C. S. I. (24-Pergunnahs, Hughly. Nuddea, Jessore, Furridpore, Rungpore, Dinagepore, Rajshaye, Purnea, Sonthal Pergunnahs, Midnapore, Murshidabad, Bogra, Dacca) ; Maharaja Norendrakrishna, (24-Pergunnahs, Hooghly and Tipperah) ; Babu Chunderkali Bose, delegate of Maharaja Kamul Krishna, (24-Pergunnahs, Hughly, Tipperah) ; Babu Joykissen Mookerji and Hon'ble Peary Mohun Mookerji (24-Pergunnahs, Hughly, Burdwan, Midnapore and Birbhum) ; Babu Mohunlal Mitter, Rai Bahadur (24-Pergunnahs and Gya) ; Nund Lal Bose (24-Pergunnahs and Gya); and Mr. Meek, representing the Seals of Calcutta.

Numerous letters were received from zemindars and others in the Mofussil sympathising with the movement and giving their opinion on the salient points of the Rent Bill.

The Conference held its first sitting on the 28th February last, and continued to meet from time to time for three weeks.

6. The deliberations of the Conference were materially assisted by the memorandum of Mr. Reynolds and the draft Bill, which for convenience' sake is called Bill no. 2 prepared by him, which you were good enough to communicate to the Association in time for the first sitting of the Conference. The memorandum and the draft Bill no. 2 shew the modifications and changes, which, the Association were informed, the Lieutenant-Governor, "as at present advised, is disposed to make." At the same time they were told in your letter dated the 23rd February last, "it is understood that the Lieutenant-Governor's orders have been taken on all the points touched upon in the memorandum, but that the conclusions thus provisionally arrived at are open to reconsideration hereafter.

7. Both the Memorandum and draft Bill of Mr. Reynolds were laid before the Conference, and the discussions of the Conference were chiefly confined to the points raised therein.

8. It could hardly be expected that in matters of such vital importance as the amendment of the Rent-Law involves there should be perfect unanimity of opinion on all points. Customs, usages, and experience differ in different districts, and it is therefore not at all unnatural that under such varying circumstances particular points should be viewed variously by different landholders. It would be tedious and unprofitable to give in detail the various opinions on different questions expressed at the Conference. The Committee therefore prefer to submit to Government the conclusions arrived at by the majority on the different provisions of draft Bill no. 2. The Conference, in considering the Bill, gave the fullest attention to the remark of Mr. Reynolds that "the Bill now put forward should not be subjected to merely destructive criticism." They have made suggestions on points, which they think admit of alteratiqns or improvement, but where in their humble opinion no changes are needed, or where the changes made are unjustifiable or injurious innovations, it has not been possible for them to make suggestions, they have been obliged to content themselves with a mere statement of their reasons against these innovations.

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9. The first question discussed by the Conference was the necessity of the Bill They are unanimously of opinion that no occasion whatever has arisen for a radical alteration of the substantive law. Many as were the changes introduced by Act X. of 1859 and since reproduced in Act VIII. of 1869 B.C., not a few of which were opposed to both the letter and spirit of the Permanent Settlement Regulations, and to the judicial interpretations of the same, they have become a part and parcel of the law of the land, and numerous transactions have taken place in all parts of the country under the authority of that law. To alter the substantive law again in the way proposed would be not only to shake the basis of property thus acquired, but to unsettle still more the relations subsisting between landlord and tenant, to bring in discord where there is harmony, and to sow the seeds of ill-will and antagonism, where there are now good will and peace. It has been a received maxim in legislation that no change in law should be made unless there was an absolute and well ascertained necessity for it; such necessity should be expressed by the general sense of the people, by a deeply and widely felt want, by some administrative difficulty or by some exigencies in the social economy of the country. No such conditions, however, exist for a change in the substantive Rent Law of Bengal. Until the Government had led the way as it were by the appointment of the Rent Commission not a voice had been heard calling for a change in the law. No want or wish was expressed for such a change. Not a single instance occurred of the administrative machinery coming to a dead-lock in the absence of such a change. Nor has the progress of social economy received any check from want of such a change. If the Government had any doubt on these points, it might have instituted a proper and organized local enquiry by taking the evidence of competent persons on the subject. Instead of appointing a Commission to amend the Rent Law, it might have charged it to enquire into and report on the necessity for the desired amendment of the law. In the United Kingdom, as indeed in all other civilized countries, such enquiry generally precedes legislation, but unhappily as regards this momentous land question of Bengal, which affects millions of people, and interests hundreds of millions of sterling worth, execution has preceded enquiry, a foregone conclusion has taken the place of unbiassed investigation, assumption that of logical deduction.

10. The origin of the movement for an amendment of the Rent-Law is well known. When the Road Cess was imposed in 1871, the Legislature charged the landholders with the duty of collecting it, rendering them liable to pay it in advance from their own pockets, but empowering them to realize it from their tenants as an arrear of rent. No compensation or remuneration was paid to them for this trouble, expense, and sometimes sacrifice. The landholders complained that they could not realize their own rents with due facility, though they were bound to pay in the Government revenue with clock-work punctuality, and that their position would be worse if they were made to pay in the Cess on behalf of their tenants and to recoup themselves by the present dilatory process of rent recovery. The justice of the complaint was admitted, and a hope was held out that the procedure for the realization of rent would be simplified. The helpless position of the landlords was made patent when the agrarian rising broke out in Pubna in 1873, and Sir Richard Temple, who soon after succeeded to the Government of Bengal, immediately after he was released from the duties of the Famine, took up the "Rent question," as it was called; he passed a Bill entitled the Agrarian Outrages Bill, and also sketched a measure for the simplification of the procedure for the recovery of rent in ordinary cases, but he did not remain in this province long to carry it out. The present Lieutenant-Governor succeeded him, and in the very first year of his administration His Honor in addressing the Bengal Council regarding the Cesses said:

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They (the landlords) have not such facilities as they should have for the ready and prompt realization of their rent and the Government cesses. This difficulty had already attracted the attention of my predecessor, Sir Richard Temple, and just before he left Bengal he recorded a minute expressing his intention of at once applying for the sanction of the Government of India to pass a short Bill to provide a system for the realization of rent in a somewhat more summary, and prompt process than that which now exists. I shall give that subject my best attention, and I may say that I am already in communication with the officers subordinate to me, and I hope it will not be long before I shall be in a position to ask the Council, with the permission of the Government of India, to pass a Bill of this sort."

Accordingly a Bill entitled "a Bill to provide for the more speedy realization of arrears of rent" was introduced in the Bengal Council in 1878 by the Hon'ble Mr. Mackenzie, Secretary to the Government of Bengal, Revenue Department. The remarks of Mr. Mackenzie were so pertinent and so clearly set forth the reasons and motives of this measure that the Committee of the British Indian Association crave permission to reproduce them here. Mr. Mackenzie said :

The law's delays are, we know, proverbial; but the delays of a Bengal rent suit in a Bengal Moonsiff's court are more than even proverbial philosophy can make palatable. Notwithstanding the fact that in about 75 per cent. of the suits for arrears of rent the claim is not really contested the zemindars and other rent receivers have too often found themselves unable to recover their just dues without submitting to a process which entails costs that may possibly never be recovered and delays that are frequently embarassing and ruinous ; and even when the zemindar has got his decree, it by no means follows that he has got his rent. Now, it is doubtless true that much of this difficulty in realizing rent actually due has arisen from the fact that in many districts there lie unsettled between landlords and tenants very serious open issues regarding rates, enhancement, interest, tenant-rights, and so forth. And the zemindars were, at the outset, anxious, that in any legislative settlement of the matter the whole field of dispute should be, as it were cadastrally surveyed, and all the doubtful boundary lines permanently marked. This course of action was, as some of us are aware, very strongly pressed upon the Government at the time of the Pubna rent disturbances, and at the commencement of the more widespread, though less noisy, agrarian movement in Eastern Bengal ; but even Sir George Campbell shrank from encountering the general upheaval of the whole rent system, as by law established, which such an enquiry and such legislation would certainly then have brought about. It was decided, therefore, to adopt a policy of watchfulness and waiting, in the hope that compromise and common sense would lead both parties nearer to a mutual settlement. That Policy has to a great extent been justified by its results, and you, Sir, were able, at the close of your first tour throughout the Eastern districts, to declare your satisfaction with the improved tone and feeling which you then found to exist between landlords and tenants owing, as it appeared, to wise and mutual concessions made. If anything were required to prove the enormous difficulties which even now beset every attempt to deal by law with the details of the economic problems that are wrapped up in this question of enhancement, the criticisms elicited by the measure so ably advocated by Sir R. Temple two years ago would supply that proof. The present Government is now indeed considering the possibility of dealing with it by approaching the difficulty from a different side. A position which it is hopeless to storm in front, may sometimes (as at Peiwar Kothul) be successfully outflanked. It is just possible that by reverting to the old theory of rent adjustment in this country, as a matter for the arbitrament or settlement of the ruling power and its revenue officers,—it is possible, I say, that we may find a rational remedy for the existing unsatisfactory dead-lock. That, however, is a matter which needs careful consideration and jealous scrutiny ; and circumstances have arisen which make it imperatively necessary to deal separately and at once with the more simple question of the recovery of undisputed arrears of rent.

The zemindars on their part are now not merely not unwilling, but anxious, to have this portion of their case taken into separate and final consideration. The Road Cess and Public Works Cess

Acts have thrown upon them the responsibility of collecting with their rents and paying into the treasuries all that portion of this fresh local and provincial taxation which falls upon undertenants of every degree. If they cannot recover this easily and effectually from their tenants, they must under penalty pay the amount themselves—a position which the State is obviously bound to render as little burdensome as possible. The Lieutenant-Governor, therefore, as he has informed us immediately on his assumption of office, and in accordance with the last views of his predecessor, pressed upon the Government of India the necessity of early legislation to facilitate the recovery of undisputed rents and to improve the law for execution of decrees in rent cases.

11. Such in brief is the history of the movement for the amendment of the law for the recovery of rent. The landholders, the Committee respectfully submit, have a just right to demand from Government a law for the speedy recovery of rent; their estates are liable to sale under a rigorous sunset law, if they are late by a minute on the appointed day in the payment of Government revenue; their property is also liable to be sold, if they fail to pay in the cesses for their tenants, that is to say they are held responsible for other men's dues. As the Government has promised from the days of the Permanent Settlement to give them legal facilities for the easy realization of rent, and as the promise was renewed from time to time when the collection of the cesses was thrown upon them, the present Government of Bengal sought to redeem the promise by the introduction of the Bill referred to, but the matter was complicated by the importation of debatable points connected with the transferability of occupancy holdings and its incidents, and the difficulties were still more aggravated by the Select Committee on the Bill, who reported, "it is feared that many of the provisions of the Bill will be found eventually so intimately connected with other portions of the existing law not ostensibly affected by it, that the majority of the Committee would prefer to see the whole subject of a revision of the rent law once for all fairly faced." Seeing the multiplication of difficulties on all sides in the way of the proposed measure this Association gave their adhesion to the projected consolidation of the Rent-law in the hope that the primary object aimed at would be attained without material alterations in the substantive law. But the result, the Committee cannot help remarking, has been both disappointing and alarming. The draft Bill prepared by the Rent Commission is simply revolutionary and confiscatory, and the landholding class feel so strongly the gross injustice and one-sided character of the measure that if they were to make their choice they would rather forego their just demand for facilities in the recovery of rent than submit to a course of legislation which would deliberately deprive them of just and acknowledged rights in not a few instances inherited from a time anterior to the establishment of British rule in this country, in many more instances paid for in hard cash under the solemn sanction of the legislature, long cherished and naturally dearly prized. The justice of the complaint of the landholders against the Bill of the Rent Commission is practically acknowledged by Government by the fact that it has not accepted the Bill in its entirety, and that Mr. Reynolds with the approval of Government has made some material alterations in it.

12. None has borne more emphatic testimony than His Honor the present Lieutenant-Governor to the prosperous condition of the peasantry of Bengal. In the very first year of his administration, after visiting East Bengal, His Honor in a public address said, "I have just returned from visiting the eastern districts, and I may say on this occasion, when my administration is only at the commencement, what I could not well say at a later period without seeming to seek credit for the Government of which I am the head. Great as was the progress which I knew had been in the position of the cultivating classes, I was quite unprepared to find them occupying a position so differ-

ent from that which I remembered them to occupy when I first came to this country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, as comfortable as the peasantry I believe of any country in the world; well fed, well clothed, free to enjoy the full benefit of their own labors, and to hold their own and obtain prompt redress for any wrong." With reference to the other districts of Bengal the same favorable testimony is borne in the Resolutions of the Local Government reviewing the annual administration reports of the Revenue Divisions. It is clear from these testimonies that the present rent-law does not bear hard upon the peasantry of Bengal, and that therefore there is no necessity for the proposed radical changes in the substantive law.

13. The landholders of Bengal had asked for facilities in the realization of arrears of rent, and the Government, as observed above, has more than once acknowledged the justice of their demand. The original project of legislation was restricted to that object, and the British Indian Association solicit that the proposed Rent Bill be confined to that object only. They are not quite sure that even if the changes now proposed were effected, they would be a final solution of the Rent Question. The authors of Act X of 1859 had thought that their law would secure that object, their successors now deem it otherwise. As the projected legislation unfortunately seems to be based more on sentiment than proved necessity, there will be little security for rights of property, and the Association therefore respectfully and earnestly appeal to His Honor to consider whether the Government should seal with its sanction a course of legislation, which would tend to discourage the investment of capital in land and fill the minds of proprietors of land and of hundreds of thousands of persons who hold under them in descending grades with dissatisfaction, distrust and discontent. When such is the case it may fairly be asked whether there is sufficient evidence establishing the necessity for an arbitrary or violent interference with the "rights of property," which, in the language of an eminent English statesman, constitute "the main basis of liberty and civilization."

14. Should the Government, however, determine to legislate on the subject, the Committee would respectfully urge that legislation ought to be based on the results of enquiries conducted by a Commission or any other constituted authority into the circumstances and economic condition of each district in Bengal and Behar. An enquiry of the nature mentioned would bring into light the peculiarities of each district, the respective rights of landlords and tenants as recognised by local custom and usage in such district, the economic conditions regulating rent, and the changes if any introduced by the later laws, and would enable Government and the public to judge whether any and what changes are necessary in the existing substantive law. The danger of passing a law of wide and general application, and introducing uniformity throughout the Lower Provinces in a variety of matters dealt with in the bills without taking into account past and present differences is very great If any evidence was needed to convince the Committee of this danger, it was the great divergence of opinion expressed at the Conference on some of the most important questions submitted for discussion.

15. With these preliminary observations the Committee will proceed to submit the conclusions of the Conference on the provisions of Draft No. 2. The Conference gratefully acknowledge that this Bill in some particulars is a decided improvement upon that of the Rent Commission, but in other respects it goes beyond the latter, and as it is for the most part founded upon the original Bill and partakes of its one-sided character it is open to much the same objections that have been taken to the

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other. It also seeks to destroy existing rights of the landlord and confers new rights upon the tenant inconsistently with the Permanent Settlement Regulations. The Conference propose to elucidate these points by their detailed criticisms of the Bill.

16. Sections 13 and 14.—The Conference are of opinion that these sections which refer to *putni* talooks should be omitted. The present Putui law is working smoothly, and does not call for any change. There is, therefore, no necessity for incoporating it with the present Rent Bill.

17. Section 18.—This section materially alters the law respecting the right of occupancy. It declares that "every settled ryot has a right of occupancy in the land, which he holds or cultivates as a tenant, whether such land be held under a lease or otherwise." Explanation I. says, "A settled ryot is a ryot, who has his fixed habitation in the village or estate in which he holds or cultivates land as a tenant, or whose fixed habitation is within a distance of two miles from the lands, which he holds or cultivates as a tenant."

18. This section thus raises the whole question of occupancy right. The present rule of 12 years' possession constituting occupancy right has been declared by the highest legal and fiscal authorities to be an invasion of the proprietary rights in Bengal guaranteed by the Permanent Settlement Regulations. Sir Barnes Peacock, the late Chief Justice of the Bengal High Court, remarked that "it interferes with the just rights of the zemindars, at least in the permanent settled estates by vesting rights of occupancy in ryots, who had no previous existence." Mr. C. Steer, another Judge of the High Court, was of opinion that it "conferred rights on the ryots which they never had before." Mr. G Loch, also a Judge of the High Court, held that under the old Regulations it was the *khoodkasht kudeemee* ryots, who had the right of occupancy. He asked the question, "who were these khoodkasht kudmee ryots," and he thus answered it himself: "They are evidently ryots who were on the estate, cultivating the lands of the village in which they resided at the time of the decennial settlement. They are not ryots whose engagements date from a period *after* that settlement, who were settled by the first engager or his representative subsequently to the settlement; for such tenures were liable to be cancelled by the auction-purchaser. They were the ryots holding and cultivating lands in the village in which they resided at the time of the settlement of the estate, and as such *they and they alone are ryots who have a prescriptive right of occupancy.* All other ryots subsequently settled, though now residing in the village and cultivating lands of that village, though entitled to be called *khoodkasht* from that circumstance, are not *kudeemee*, and are either tenant-at-will, or tenants for a term, according as they hold their lands in lease, or otherwise. We may, I think, look through the length and breadth of the Regulations, and we shall find nothing that declares a ryot settled on an estate *subsequent* to the decennial settlement to be other than a tenant-at-will, nothing that recognises in such a ryot any prescriptive right of occupancy." Mr. C. B. Trevor, also a Judge of the High Court, was of opinion that the "occupancy section of Act X. of 1859, is a great infringement on the law previously existing. It introduces a new classification of all ryots, into those with right of occupancy and those without right of occupancy, making length of tenancy the distinction between them, and abolishing the old distinction of resident and non-resident ryots with their separate rights. moreover, whether read retrospectively or prospectively, it curtails the power of the zemindar." Mr. E. T. Trevor, member of the Board of Revenue, remarked: "It follows, therefore, that I am of opinion that the sixth Section of Act X. of 1859 has conferred new rights upon all pykasht ryots in Bengal who have held the same land for more than twelve years, and, of course, so far, has encroached upon the rights of the zemindar to

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consider them mere tenants-at-will, and, as such, liable to be ousted when their lease has expired, if they held under a lease, or, as soon as the crop was off the ground, if they did not so hold."

19. But it is urged that the present proposal to confer the occupancy right on a "settled ryot" has the object of placing the rule in accord with the law and custom prevalent in Bengal from the time of the Permanent Settlement. This statement is not however, borne out by facts. The tenures and holdings existing at and about the date of the Settlement, (the Committee here quote the petition of the Association respecting the draft Act X. of 1859) may be classed as follows:

1st.—Such as without the right of property have still the right of occupancy attached to them, subject to the payment of such rent, progressive or otherwise, as may have been stipulated between their holders and the zemindar, when the latter entered into engagements with Government for the payment of public revenue. These are the dependent talooks described in Section 48 of Regulation VIII of 1793.

2nd.—Such as have the right of occupancy guaranteed at a fixed rent, in consideration of their having beeen so held for twelve years prior to the Decennial Settlement. These are the istemruree or mukururee tenures described in Section 49 of the above Regulation.

3rd,—Khoodkasht tenures described in Clause 2, Section 60, Regulation VIII of 1793, or tenures which were held by resident cultivators, at the time when the Decennial Settlement was concluded, and which tenures were continued to them, subject to the payment of rent at the Pergunnah rates.

4th.—Such as are governed by written contracts, entered into between the tenant and the landlord, prior or subsequent to the Decennial Settlement, for lands other than those described in Sections 48, 49 and 60, of Regulation VIII of 1793.

5th.—Such as are held from year to year, or tenures-at-will.

The condition of these tenures was gradually affected by the Revenue Sale Regulations promulgated from time to time. By the Regulations passed prior to Regulation XI of 1812, dependent talooks of the nature described in Section 48, Regulation VIII of 1793, which existed at the Decennial Settlement, and which were not found at the time or subsequently to be liable to enhancement, as provided in Section 51 of that Regulation, were declared to be exempt from enhancement, and the holders not liable to dispossession, except upon proof in a regular suit by the auction-purchaser of his title to enhance the rates.

Talooks existing at the Decennial Settlement, which had been proved liable to increase in the manner stated in Section 51, Regulation VIII of 1793, were liable to enhancement at the Pergunnah rates, but the holders of them were not subject to dispossession.

Talooks created since the Decennial Settlement, like the above, were declared liable to enhancement at the Pergunnah rates, with the same reservation as to dispossession.

Istemrardars were held exempt from dispossession or enhancement.

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Khoodkasht ryots holding their lands prior to or at the time of the Decennial Settlement were held to be liable to enhancement at the Pergunnah rate, but not to dispossession.

Pykasht ryots were subject to dispossession at the option of the purchaser, at the expiration of their leases.

It having appeared that the Pergunnah rates were various, fluctuating and uncertain, it was provided by Section 7, Regulation V of 1812, that the lands liable to enhancement under the operation of the Sale Laws should be assessed at the rates obtaining for the time being in adjacent lands of the same description.

It would appear from the foregoing that, up to 1812, the Legislature considered it a sufficient protection to the public revenue, as well as the interests of the purchaser, to authorize the cancelment of leases (except those of the exempted classes defined above), and the enhancement of the rates according to a fixed rule, that is, the Pergunnah rate, if any there were, or the rate obtaining for the time being in similar lands adjacent, and did not contemplate ejectment, except in cases provided in Section 7, Regulation IV of 1794, that is, when the terms of settlement, according to the Pergunnah rates, were declined by ryots.

Regulation VIII of 1819 took a different view of the principle, which should govern under-tenures and holdings after sale for arrears of Putni rent, evidently to check fraud, practised by outgoing proprietors.

This principle of annulment of tenures and holdings was more clearly and in unmistakable language laid down in Regulation XI of 1822, and in Section 30 of that Regulation it was declared that a revenue sale, for reasons stated therein, annulled all the tenures created subsequent to the Settlement, or such as the original engager might have set aside, except *bona fide* leases of ground for houses, &c., saving likewise, as enacted in Section 32, the exempted classes of tenures, which were defined and protected in the following manner :—

"The above rules, or any other rules contained in the existing regulations, by which persons are declared competent, under certain restrictions, to annual engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, putteedar, mofusil talookdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagement of settlement, or his representative. Nor shall the said rule be construed to authorize any purchaser as aforesaid to eject a khoodkasht kudeemee ryot, or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor shall a purchaser demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former malgoozar, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars, from the old established rates, by special favor, or for consid ration, or the like, or in cases in which it may be proved that according to the custom of the pergunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assess-

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ment or other demand not interdicted by the Regulations of Government."—*Section 32 Regulation* XI. 1822.

In pursuance of the principle laid down in Section 30, Regulation XI of 1822 khoodkasht tenures created since the Decennial Settlement were likewise declared liable to be annulled, and the latter part of Section 32 provided as follows :—" Nor shall the said rule be construed to authorize any purchaser, as aforesaid, to eject a khoodkasht kudeemee ryot, or resident or hereditary cultivator, having a prescriptive right of occupancy." This could only apply to those khoodkasht ryots who held their lands at or before the Settlement, and whose right of occupancy, on payment of rent according to a fixed rule, was guaranteed by Section 60 of Regulation VIII. of 1793.

Any doubts and uncertainties, which the provision of Section 32, Regulation XI. of 1822 might have given rise to, were cleared up by Act XII. of 1841, and subsequently Act I. of 1845, and the classes of tenures which the first portion of Section 32, Regulation XI. of 1822 intended to protect, were clearly defined in Section 26 of the Act :—

Firstly.—Tenures which were held as istemraree or mocuraree, at a fixed rent more than twelve years before the Permanent Settlement.

Secondly.—Tenures existing at the time of the Decennial Settlement, which have not been or may not be, proved to be liable to increase of assessment, on the grounds stated in Section 58, Regulation VIII. of 1793.—*Section* 26 *Act I of* 1845.

That by the terms khoodkasht tenures mentioned in the latter part of Section 32, Regulation XI of 1822 the Legislature only meant to protect kudeemee khoodkasht tenures having rights of occupancy at fixed rates, or at rents assessable according to fixed rates *viz.*, such as existed at or before the Settlement, and not created subsequently, may be gathered from the observations of the President in Council in the table of remarks upon the Sale Law of 1841, in reference to the suggestions of the Landholders's Society upon this class of tenures.

Act I of 1845 introduced two other important exceptions to the class of exempted tenures, which Regulation XI of 1822 did not contain, *viz., bona fide* leases in perpetuity for the clearing of jungle and farms granted in good faith and at fair rents for terms not exceeding twenty years, with the sanction and approval of the Collector

Warren Hastings, writing in 1776, says ;

"It is to be observed also that there are two kinds of ryots. The more valuable are those who reside in one fixed spot, where they have built themselves substantial houses or derived them by inheritance from their fathers. These men will suffer much before they abandon their habitations, and therefore they are made to suffer much ; but, when once forced to quit them, they become vagrant ryots. The vagrant ryots have it in their power in some measure to make their own terms with the zemindars. They take land at an under rent and hold it for one season , the zemindar then increases their rent or exacts more from them than their agreement, and the ryots either desert, or, if they continue, they hold their land at a rent lower than the established rate of the country."

Sir John Shore in his famous Revenue minute, which, as Harington says, forms the basis of Regulation VIII of 1793, and which was written in June 1789, remarks :

"Those who cultivate the lands of the village, to which they belong either from length of "occupancy or other cause, have a stronger right than others ; and may, in some measure, be

"considered as hereditary tenants; and they generally pay the highest rents. The other class "cultivate lands belonging to a village where they do not reside; they are considered as tenants-"at-will; and having only a temporary, accidental, interest in the soil which they cultivate, will "not submit to the payment of so large a rent as the preceding class; and when oppressed easily "abandon the land to which they have no attachment."

20. It is thus evident that it was khoodkasht kudeemee or resident and hereditary ryots, who had the right of occupancy, and if the Government would restore the *statu qua ante* there would certainly be no objection. But the definition of "settled ryot" in Mr. Reynolds' Bill is wholly opposed to the law and custom prevalent in the country. He does not say what length of possession will constitute the right of occupancy—a ryot may hold and cultivate land in a village or estate for a day and may *ipso facto* claim the right of occupancy in such land. Even if the occupancy ryot of the old Regulations be held to be khoodkast, and not a khoodkast kudeemee ryot, that is to say, a resident and not a resident hereditary ryot, all the authorities, who take this view, admit that such a ryot must hold and cultivate land in the *same village*, whereas Mr. Reynolds extends the limit to an estate, which may cover an area, extending over miles traversable by a journey for some days. Again, Mr. Reynolds would confer the right of occupancy upon a tenant, whose fixed habitation is within a distance of two miles of the lands which he holds or cultivates as a tenant. The landlord has a natural interest in fostering his own tenant, and if the latter holds and cultivates lands in a village belonging to him, he has a direct motive in securing his position. But he cannot have that motive when the ryot dwells on his land and cultivates the land of a rival proprietor or *vice versa*. Nor can it be just to compel him to give protection to a person, who is not wholly his own tenant. The settled ryot as defined in Draft Bill No. 2 will practically become the master of the land against the express wish of the landlord and to his serious detriment. He may squat somewhere over an estate without the knowledge or consent of the landlord or through the collusion of his amla, and once he does so, he acquires the right of a sub-proprietor, that is to say he will have the right to sell or settle the land in any way he may like, provided he or his successor pays what the court will decide to be fair and equitable rent. The "settled ryot" will not be called upon to prove that he does mean to settle on the land he holds or cultivates—even he will not be required to adduce an ordinary presumption of his intention by length of occupancy. He may be a veritable speculator and may come in only with a view to pocket the price of the land which as occupancy tenant he will be privileged to sell. On the other hand valueable rights of the landlord are to all intents and purposes confiscated for the sake of tenants, who cannot establish any claim to consideration by length of possession and attachment to the land. If the Government is actuated by a benevolent motive to strengthen the position of actual cultivators by transferring the proprietary right of the landlord to the actual tillers of the soil, without any compensation to the former, to the justice and equity of which the proprietors cannot but seriously question, that object cannot surely be attained by encouraging mere squatters on land. If the present rule of 12 years' occupancy is a direct infringement of the landlord's right, as is admitted by competent authorities, it may be easily conceived how much more is that injustice and arbitrary dealing aggravated by the provision under comment. The Conference hope that it is not intended to include pasture lands within the purview of this section.

21. In the same section, Explanation 3, clause *a*, provides that a right of occupancy may not be acquired by a proprietor in land, which is a portion of his estate. As the Bill authorizes the sale of the occupancy tenure, and as under Chapter VI. relating to

merger a proprietor will have the right to declare by a deed his intention to keep a tenure distinct, when an inferior right merges in a superior right, it is meet that this privilege should be accorded to him in respect of occupancy holdings. If he purchases an occupancy holding, he ought to be allowed the usual right of a purchaser, and to keep it distinct. In the vissicitudes of fortune he may lose his estate, but if he be permitted to keep his occupancy right alive, he may have at least the satisfaction of possessing a home and some lands for subsistence in the hour of misfortune. The Conference, therefore, suggest that this right may not be taken away from him. The same remarks apply to a tenure-holder and mokuridar, clauses *b.* and *c.*

22. Section 19 provides that " no contract, whether entered into before or after the commencement of the Act, shall in any case debar a tenant from acquiring a right of occupancy, except under the provisions of Section 32." This provision is opposed to all received principles of civilized legislation and jurisprudence. It is incomprehensible why a man should be considered competent to enter into contract of any other description except this. If he can barter away his money, his cattle, all his other property, and enter into other land contract or engagement, it cannot be reasonable to take away his power to make a contract regarding his right in an agricultural holding. The ryot is a free agent, he is considered fit to understand his interests in all other matters, why should he be debarred of the right of exercising his own intelligence and freedom of will in a matter, which he certainly ought to understand well? He may as the Bill provides sell his holding, but he will not be allowed to enter into special engagement as to the terms on which he will possess the holding. Even a cooly is recognized as a free agent in selling his labour, but neither the zemindar nor the ryot is to be recognized as such in the disposal of land within the meaning of this section. The law of contract is the basis of civilized life, the primary condition of social and moral progress. It would be most short-sighted and one-sided legislation to cancel this right of contract. The legislature has always deplored that the interchange of written engagements has not been common among the zemindar and the ryot in this country. From 1793 it has always encouraged the practice; the registration law has given a new impetus to the exchange of pottahs and kabulyats, but this provision will put a stop to the progress of this healthy practice. If the interchange of written engagements between the landlord and tenant had been common, many of the evils connected with the management of land in Bengal, the Conference feel convinced, would have disappeared. Considerations of justice and sound policy, therefore, require that the freedom of contract should be recognized in all matters, and that where individuals would prefer to be guided by custom rather than by a specific written engagement, custom should be respected. The Conference would, therefore, suggest the omission of this section.

23. Section 20. This section describes the legal incidents of a right of occupancy. Clause *a* declares an occupancy tenure saleable in execution of a decree for arrears of rent only. To this provision the Conference agree, subject to the enactment of a provision similar to that contained in Sec. 38 of Bill No. 2, but they object to clause *b*, which declares the occupancy holding transferable by private sale, gift or devisable by will. This provision would be equally injurious to the landlord and the tenant. This question has been discussed at length in the letter of the British Indian Association dated the 20th November 1878. The Conference concur in the opinion of the minority set forth in that letter. They consider it superfluous to repeat the arguments adduced by the minority against the general recognition of the transferability of the occupancy holding. If the occupancy right were made transferable by private sale or gift or devisable by will, the landlord would be obliged to recognize a royt, whom he may not know, or

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whom he may consider objectionable, and he would be thus deprived of his legitimate right of choosing his own tenant. On the other hand if facilities be given to the ryot to part with his holding, there will be so many temptations in his way to incur debt that he will soon find himself bereft of his hearth and home and reduced to the position of a day-labourer. It is true that in some districts the transferability of the occupancy holding has been recognized in a few cases here and there, but the rulings of the High Court have generally been to the contrary. Thus: "A right of occupancy is an hereditary right but it is not necessarily a transferable right. It was not the intention of the legislature when passing Act X. of 1859 to alter the nature of a jote and convert a non-transferable jote into a transferable one merely because a ryot had held it for twelve years and thereby acquired a right of occupancy."—*Ajoodhya Prasad 7. W. R.* 528 (*F. B.*). In another case it was held "that, though the law recognized the holding of the father or other person through whom the ryot inherits as the holding of the ryot, it does not recognize the right of a transferree to be identical with that of transferer. It is only when occupancy is inherited that the occupancy of the predecessor is considered as the occupancy of the tenant in possession. Unless, therefore, the tenant held a transferable tenure, the sale by him of his jote to another party, without the consent of the landlord, would not transfer to the purchaser any right of occupancy which the seller might have possessed, or enable the present occupant to plead that the period of his possession joined to that of the former tenant gave him a prescriptive right of occupancy."—*Watson and Co. 7. W. R.* 395, *Loch and Macpherson, J. J.* But a transfer which had been recognized by the landlord would be valid—*Chunder Coomar Roy,* 6 *W. R.* 190 Again, in delivering judgement of a Full Bench in appeal, Narendra Narain Roy, v Essan Chunder Sen, 22 W. R. 22, Chief Justice Couch remarked :—

"It is a right to be enjoyed only by the person who holds or cultivates and pays the rent, and has done so for a period of twelve years. It does not speak of his acquiring a right which he might, having acquired it, transfer or make use of as a subject of property; but it seems intended to secure to a ryot who has cultivated or held for twelve years a continuance of his cultivation or holding as long as he pays the rent. And the provision at the end of the section by which the holding of a father or other person from whom the ryot inherits is to be deemed the holding of the ryot supports this construction; for it appears to show that, except in that particular case the holding must be entirely by the person who claims the right. This is a law, which imposes a restriction upon the proprietary right of the zemindar or landlord, and a ryot cannot claim under it anything more than the words clearly give to him. There are not here, in my opinion, words of so doubtful a meaning that we should consider whether it would be just or equitable that the ryot should have the power to transfer. The ordinary construction of the word appears to me to be that the right is only to be in the person who has occupied for twelve years, and it was not intended to give any right of property, which could be transferred." Further: "Now, if a ryot having a right of occupancy endeavours to transfer it to another person, and in fact quits his occupation and ceases himself to cultivate or hold the land, it appears to me that he may be rightly considered to have abandoned his right, and that nothing is left in him which would prevent a zemindar from recovering the possession from the person who claims under the transfer. And not only may he be considered to have abandoned it, but if the right which is given by the law is one which exists only so long as he holds or cultivates the land, when he ceases to do that by selling his supposed right and putting another in his place, his right is gone and cannot stand in the way of the landlord's recovering possession. If it were not so, the law would become nugatory. The position of things would be that

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the transfer by the ryot involves, and gives the transferee, no right to the possession; but the ryot could not recover possession from the transferree, as he would be bound by his act of transfer; nor could the landlord recover possession because the outstanding right in the ryot would be in the way. The result would be that, although the transfer is invalid, the transferree would be able to keep possession and to set the landlord at defiance. If I think in this case it may be considered either the ryot has abandoned his right altogether, and therefore it cannot be set up as an answer to the suit by the landlord for possession; or that his right has ceased, has been put an end to, because it existed only so long as the ryot himself continued to hold or cultivate the land."

24. Such being the law, it would be a direct infringement of it, if the tranferability of the occupancy holding were now generally recognised. Such recognition would not be in consonance even with the incidents attaching to the old *khudkasht* holding, for it is admitted on all hands that the right of alienation was never possessed by *khudkasht* tenants.

25. It is but fair that the ryot should have the heritable right, if he pays the rent. His position to cultivate the land which he or his ancestors have cultivated should be secured, and this object is attained by according him heritable right.

26. The Conference agree to the saleability of the occupancy holding in execution of a decree for arrears of rent, because it is proposed to abolish eviction in the case of an occupancy ryot for non-payment of rent, (clause *d*) The Conference submit that it is not the interest of a landlord to oust his tenant; he takes such a step in the case of extreme necessity, but the existence of the power tends to the speedy realization of his rent. Practically this provision of the law has not worked injuriously, but if the Government considers it necessary to do away with eviction for the protection of the occupancy ryot, the Conference will not object to the measure provided due facilities be given to the landlord for the realization of rent. As he is responsible for the punctual payment of the revenue to the State, he naturally asks for the punctual payment of the rent due to him, and if the Government will give him necessary facilities in that behalf, he will not certainly care to evict the defaulting tenant.

27. The Committee, however. deem it due to state that the Behar landholders, who were largely represented at the Conference, do not subscribe to the above opinion. They consider that the landlord ought to have the right to eject a tenant, who defaults in the payment of rent, that this right has always been enjoyed by him, that it is recognized in the advanced countries of Europe, and that it is essential for the punctual realization of rent. They would not, therefore, recognize the saleability of the occupancy holding for arrears of rent, but would rely upon the moral and legal influence of the power of eviction for the regular realization of rent.

28. Section 22—This Section refers to the enhancement of the rent of a ryot having a right of occupancy. It lays down four grounds on which the rent of such a ryot may be enhanced These grounds do not materially differ from those prescribed in Act X of 1859 and Act VIII of 1869 B. C. The two sets of grounds are given in juxta-position for ready reference.

Grounds of Enhancement

Under the existing law.

That the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description, and with similar advantages, in the places adjacent ;

That the value of the produce, or the productive powers of the land, have been increased otherwise than by the agency or at the expense of the ryot ;

That the quantity of the land held by the ryot has been proved by measurement to be greater than the quantity for which rent has been previously paid by him."

Under the proposed Bill.

22. Subject to the other provisions of this Act, a landlord is entitled to enhance the rent payable to him in money by a ryot for land in which such ryot has a right of occupancy. Such rent may be enhanced upon any one or more of the following grounds, and not otherwise :—

(1) on the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity ;

(2) on the ground that the quantity of land held by such ryot has been shown by measurement to be greater than the quantity for which rent has been previously paid by him ;

(3) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual ;

(4) on the ground that the prices of produce in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual.

29. It will be seen from the above that the grounds enjoined in the existing Rent-law and in the draft Bill No. 2 do not substantially differ, but it is notorious that the present rules of enhancement are simply unworkable. The misunderstanding, dispute and litigation, to which they have given rise, have, indeed, become a public scandal and to re-enact those provisions would be simply to perpetuate the present state of things. The four grounds now prescribed may be properly divided into two, viz, I. the pergunna rate, and II. improvement in the productive quality of land or in the value of produce On these two points the Committee would submit the following observations :

I. The settlement of rent in Bengal has always been a matter of mutual arrangement, regulated by the laws of demand and supply. Hence it is that rents at different rates are paid for the same class of land in parts of the same mouzah. The pergunnah rate is notoriously a myth and never was a reality. The first ground for enhancement of rent referred to above is thus a very uncertain guide. Whilst the landlord cites the highest rent paid, the ryot seeks to rebut it by citing the lowest rent paid. The adjustment of rent upon such a ground could not but be both uncertain and unsatisfactory.

II. The rice-growing lands constitute the bulk of the cultivated area of Bengal, and yield the crop by the mere scratching of the ground as it were, or as the Rent Com-

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mission remark with reference to alluvial lands, "yields a bumper crop in return for the mere exertion of sprinkling the seed on its surface," and as regards these lands the dictum, that the value of the produce or the productive power of the land has been increased by the agency or at the expense of the ryot, does not as a rule hold good inasmuch as the sun and periodical rains renovate the soil annually without any artificial aid except in rare instances, and the value of the produce is regulated by causes independent of the exertions of the ryot. In some parts of the country the construction and maintenance of embankments are rendered necessary for the protection of land from inundation of salt water, but these embankments are intended for the benefit of large areas embracing the whole or a considerable portion of the estate, and the zemindar in such cases bears the cost. The only description of land, to which the second ground of enhancement, that is to say, the second ground of the old law and third of the new Bill, may apply, is the soona or high land on which other crops than rice are grown, because such land, deprived of the fertilizing effects of annual innundations, requires artificial improvement, and because the nature of the crops and the time, in which they are reared up, render irrigation and sometimes the raising of the ground necessary. In most cases the outlay made by the ryot for such improvement is more than covered by the crop of a single year, but where considering the nature of the crop a ryot is compelled to incur a comparatively large outlay, he seldom undertakes the work without fortifying his position by exchange of lease upon uniform rent for a number of years, which again is regulated by the amount of estimated outlay and prospective return. But the rice-lands are differently situated; they require no improvement; ordinary labor is quite sufficient to produce the crop. The second ground of enhancement is thus inapplicable to rice-lands, which as observed above constitute the bulk of the cultivated area of Bengal, and simply opens a wide door to litigation in consequence of the practical difficulty of ascertaining the rise in the value of produce, and the decisions of the High Court have greatly complicated matters in this direction. The result has been that the law of enhancement under the working of the two grounds under notice has come to a dead-lock.

30. The settlement of rent in Bengal is a *vexæta questio*, and if it is to be settled, it ought to be settled once for all. There were three suggestions made at the Conference, *viz.*, the determination of the rent of the occupancy ryot on the principle of the Punjab and Oudh Tenancy Act, II. the determination of the rate of rent according to the rule of proportion as laid down by the majority of the Judges of the High Court in the great Rent Case of 1864, III. the determination of the rate of rent by dividing the produce of the land in certain proportions between the landlord and the tenant.

31. With regard to the first point the Committee of the Association had originally recommended it, saying that the simplest way for adjusting the rent of the occupancy ryot would be to take competitive value of land, and by comparing the rent paid by an occupancy ryot with the same paid by *kurfa* or *burga* ryot to apportion the difference between the two in the proportion of three-fourths to the zemindar and one-fourth to the ryot. The process would obviate the enquiries and calculations which would be necessary to assertain the increase in the value of produce within a given time. This kurfa or burga ryot answers what is called a non-occupancy ryot, and by settling the rent of the occupancy ryot at one-fourth less the difference of the rent paid by him and what is paid by the former, the provision would practically give to the occupancy ryot a privilege, which he did not possess under the prior laws nor does he possess under the present law. The Committee point out that under the Oudh Rent law the deduction allowed was twelve and a half per cent, compared with the rent paid by the non-occupancy ryot, whereas they had suggested 25 per cent. of the difference

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But this recommendation was not accepted by many zemindars in the mofussil nor by Government. The Conference do not also concur in this recommendation.

32. The second point was discussed by the Committee of the Association in their letter to the Bengal Council respecting the Agrarian Disputes Bill, 1876. The Committee were of opinion that the rule of proportion would be practically unworkable. They quoted the following remarks of the late Raja Degumber Mitter, which occured in his pamphlet on the judgment of the High Court in the Great Rent Case referred to above : " The rule of proportion," the Raja wrote, " besides being unsupported by any prior legislation and repugnant to a right of property which in unmistakeable terms has been guaranteed to the proprietors, however weak or uncertain their title to it might originally have been, is incoherent in itself. Under the principle laid down for determining the enhanced rent, to which the zemindar is entitled, the primary thing to be ascertained, is the rate at which the ryot had hitherto paid his rent, which the Judges assume as the customary Pergunnah rate, and which must for all time measure the zemindar's share in the produce of the land. To find out this unknown, and most essential quantity, the only data given, are the area of land, and its present rental, which, I need scarcely say, are quite inadequate for the purpose. The exact produce of the land, and exact price of such produce, at the time the settlement of the current rent was made, must be first known, before any attempt can be made, to find out the rate at which the rent was last adjusted. Now there may be half-a-dozen causes to deteriorate or enhance the productive powers of the land, within a limited time, entirely independent of the agency of the ryot or the zemindar; and yet to work the formula, we are required to assume, that the productive power remains the same."

With regard to the value of produce, the learned Judges very complaisantly say : ' A zemindar, on suing to enhance, must state the grounds on which he desires the enhancement. If his claim be founded on the increase in the value of the produce through a simple rise of price, he will, whatever may be the mode of adjustment determined on, have to state the circumstances leading to the demand, and he will have to inform the Court of the particular rise in price subsequent to the last adjustment, which justifies that demand. In stating this he will give the Court sufficient data for the formula above laid down. 'It is very difficult to catch the meaning intended to be conveyed by these words. To mean any thing to the purpose, they must mean this ; that to come before the Court, under the second ground of enhancement, the zemindar must show, whatever may be the mode of adjustment determined, what the price of the produce was, when the adjustment of the current rent took place, as also its present price, he will thereby give the Court sufficient data to work the formula. But with due deference to the learned Judges, I beg to submit that in showing to the Court that the rate previously paid, was not fair and equitable, it is not at all necessary to go into the fact of the past price and produce, but to prove what they are at present, and after making a fair allowance from the product thereof, for the ryot's profits, to show by the remainder that the rate at which the current rent might have been adjusted, was not fair and equitable within the meaning of the Act, whereas under the proposed rule of proportion, the finding out of the exact rate at which the current rent was adjusted and which is assumed to be the Pergunnah rate, is a *conditis sine qua non.* For this purpose we must have the exact measure of produce, and the exact price of the same, at the time of the last settlement, since the rate is the multiplier, and a slight difference in it, will materially vary the product, either in favor of or against the different parties concerned."

" Convinced, however, of the impossibility of ascertaining the exact price which

prevailed at the time the last settlement had taken place with the ryot, the learned Judges say, "it is not necessary to refer to the period of the last adjustment itself The price of the produce previous to the date of the alleged rise in value will be sufficient data on which to base the formula of proportion." This at-any-price solution of the problem, I must be permitted to say, is an admission, that the rule of proportion is unmanageable for practical purposes. Suppose for instance, that the current rent which is sought to be enhanced is 2 Rs. for 2 beegahs of paddy land, the price of the paddy at the last settlement with the defendant was 4 maunds a rupee, for years prior to the institution of the suit, 2 maunds a rupee, and at the date of the suit, 1 maund a rupee. Taking the produce at 8 maunds a beegah, we find, that the rate at which the current settlement was made with the ryot, is half the produce, whereas if the calculation was made according to the price which ruled 4 years prior to the suit, the result would show the rate at one-fourth the produce; enhanced rent at the present price, will therefore be in one case 4 Rs. a beegah and in other only 2 rupees. Such is the result the rule of proportion leads to, to be worked under the guidance of the instruction which the learned Judges have condescended to lay down."

33. Moreover, while the Conference are prepared to admit that the rule of proportion as laid down by the majority of the Judges of the High Court in the Great Rent Case of 1864 is reasonable and equitable, they cannot shut their eyes to the circumstance that it is not workable as experience has shewn. The data for determining the proportion being absent the rule cannot be fairly applied.

34 The third point is the division of the produce of the land in certain proportions between the landlord and tenant. This principle is not new; the Association had recommended it before, and the reasons upon which they base this recommendation may be summed up as follows: The Committee will not enter into a discussion of the economic question of rent. They take rent to mean a portion of the produce yielded as an equivalent for the use and occupation of the soil. This is the theory, on which, the Committee submit, rent has always been regulated in this country. It was the principle on which the demand upon the land was settled in the days of the Hindu and Mahomedan rulers of the country, and is still followed in the Native States. This principle was broadly accepted by the Select Committee of the House of Commons appointed to enquire into and report on the affairs of the Hon'ble the East India Company, *vide* the celebrated Fifth Report, p. 18, Madras edition. It is also ably enunciated in Mr. H. L. Harrison's note dated the 6th March 1880 printed in the appendix to the Report of the Rent Commission Vol. II. If a reference were made to the history of rent in times anterior to the Permanent Settlement, it would be found that it varied from three-fourths to one-half. Thus Sir John Shore in his Minute on the Permanent Settlement dated 21st December 1789 says:—"The proportion paid by the cultivators to the soil may be reckoned at a half, or it may never perhaps, to three fifths of the gross produce." It would appear from certain jummabundi papers of the 24-Pergunnahs that 7-12ths were the zemindar's share, and 5-12ths that of ryot. The rates prescribed for the ceded provinces of the North-West by Clause 14, Section 53, Regulation XXVII, 1803, shew the rate of rent fixed by Government.

The Clause runs thus —

"Where neither the proprietors nor farmers may tender suitable conditions of agreement, a khas or bowlee settlement shall be made with the ryots; stipulating the shares they are to get from the different kinds of land as follows:—In politch lands, or

such as are in full cultivation, Government shall receive five pussarees and the ryots three pussarees. In chunchur lands, or such as have not been cultivated, for two or three years, Government shall receive two, and the ryot six pussarees. In bunjer, or waste lands, Government shall receive one, and the ryot seven pussarees. Chunchur lands after one, and bunjer lands after two years, shall be considered equal to the politch ; and further, the bunjer lands after one year shall be taxed equal to chunchur. In the khas settlement, the bhaint or *nuzzerana* shall be abolished; the putwaree's wages shall be borne by the ryots ; but the mussaut, or measuring and valuing the crops, shall be defrayed by Government, in consideration of the additional pussaree received out of the politch crop. In all cases where crops are valued, it shall be done according to the price current of the day. In the khas settlement, the ryots shall engage that the cultivation of the lands shall not fall off, and that they shall not undertake the cultivation of new lands, until they have accomplished that of the old."

From the above it is evident, that even in 1803 the prevailing rate in the North-West was 5-8ths of the gross produce, with the additional charge upon the ryot, for the maintenance of putwarees. "This was not the rate exacted," as has been aptly remarked by a publicist, "by an unscrupulous, hard-hearted Bengal Zemindar, or by a rapacious Indigo planter, from a timid and unresisting tenantry, but by a humane and paternal Government, ever anxious to promote the welfare and contentment of those placed under its rule. Nothing therefore can be a more unerring guide, in determining the customary rate according to which the land rent of the country used to be adjusted when the Permanent Settlement of Bengal was concluded."

Since the commutation of corn-rent into money-rent, and the rise in the value of produce, the proportion has certainly become less, but in the western districts of Bengal the rate still varies from one-third to one-half, and if in the eastern districts the proportion is less, it is because the cesses greatly cover the difference. When, however, an amendment of the law of enhancement is contemplated, it is not intended that the cesses should continue, and such a rate should therefore be fixed as would be fair and equitable to both parties. In 1859 this Association, in commenting upon the Rent Bill, thus addressed the Hon'ble the Legislative Council :—

"If your Honorable Council wish to adopt a practical instead of an imaginary standard in case where the rent is assessable under a fixed rule, your petitioners would suggest the adoption of a certain proportion of gross produce as the rent exigible from cultivators. Rent, it is admitted, is a portion of the produce yielded as an equivalent for use and occupation of the soil. What is the portion of the produce which is to be considered as rent ? According to the custom of the country from time immemorial it is one-half, as determined by Lord William Bentinck in his celebrated circular on resumption and assessment, after mature consideration of all the authorities on the point."

The Hon'ble Mr. (now Sir) Henry Ricketts moved the following amendment in Council on the subject :—

"If in a suit for enhancement or for diminution of a ryot's rent the evidence produced by the parties shall fail to show what rate of rent is equitably assessable on the land in the ryot's possession, in such case the Collector shall proceed to ascertain the market value of the average gross produce of the land, and shall decree two-fifths of the ascertained value to be the rent payable for such land. Provided always that it shall be competent to the Court to declare a sum less than two-fifths of the value of

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the gross produce to be the rental payable, if there are any special circumstances owing to which the cultivation of the land must necessarily be attended with more than ordinary expense. When the rent of a ryot's holding has been ascertained as above provided, it shall not, unless on special ground, be again liable to question for a period of twelve years."

35. It is true that this amendment was not supported in the Council, but it could not be denied that no other member of the Council possessed greater knowledge of the revenue system of Bengal, of the history of the relations between the zemindar and ryot in this province, and of the condition of the people, than Sir Henry Ricketts, and if his suggestion had been adopted, the Conference feel confident that the stream of litigation, dispute, and dissatisfaction, which has flooded the country, the strife between class and class, and disturbances of the peace and sometimes shedding of the blood, which have occurred within the last two decades, would not have occurred.

36. It may be said that this principle would not work with equal justice, that there are inequalities in the quality of the soil, that the tillage of some lands requires greater labour, skill and expense than that of others, and that a hard and fast rule would therefore be unjust. But no rule can be devised by human ingenuity, which would work with an invariable equality. There must be extreme cases, which cannot be met by any rule, however well-considered and unexceptionable in theory. But the question is whether the proposed rule would not meet the ends of justice in the great majority of cases. This rule is based on substantial justice, for the quality of soil is measured by the quantity of its produce, and whatever the proportion fixed for division between the landlord and tenant, it will be self-adjusting, for the ryot who cultivates inferior land will give less as the landlord's share of the produce of such land than the holder of superior land. Then, again, once the proportion is fixed, the rule will be self-acting. The landlord will know his exact share, and the ryot his, and it will be the interest of both to settle disputes between them by mutual agreement according to the general standard. If this rule should lead to the prevention of dispute and litigation, the important object aimed at by the revision of the rent-law would be gained.

37. In connection with this subject there are three important points for consideration, 1*stly*, on what basis should the produce of land be calculated, 2*ndly*, what should be the proportions in which the produce of the land should be divided between the landlord and tenant, 3*rdly*, for what period the rent once so fixed should have a currency? With regard to the first point the Conference are of opinion that the average of three or even five years, (bad years, that is years of drought and flood being excepted) should be taken as the basis of calculation. There cannot be much room for dispute on this point, for the produce of lands of different qualities is well known, and in any case of difference the produce of a bigha may be cut down and submitted to ocular test. As for prices the average of three or five years preceding should also be taken as the standard; the *Calcutta Gazette* gives every week price-lists from the districts, which should be received by court as evidence of the value of the produce. As for the second point the Committee have already pointed out that originally the proportion varied from three-fourths to one-half. In the case of payment in kind Mr. Reynolds recognizes the principle of one-half. As regards staple crops the Conference would, however, divide the gross produce of land into sixteen annas, and apportion 6 annas as the share of the landlord and 10 annas as that of the tenant, converting the same into money value. Where the maximum of 6 annas has been reached, there should be no further increase. Where,

however, the enhancement of rent up to the maximum standard of 6 ans. would exceed double the present rent, the enhancement should not be more than double, for in that case a further addition would be oppressive. The Conference believe that if the proportions be laid down as proposed above, they would be fair to both landlord and tenant; the former would receive a fair and equitable rent, and the latter would have enough to cover the costs of cultivation, maintenance and profit. And lastly the Conference would give a currency of ten years to a settlement of rent on this basis. The ryot will not be disturbed by demands for enhancement for a period of ten years. If after the expiration of this period circumstances should arise, which might render the rate of 6 ans. previously fixed lower, a revision should certainly be allowed, but the rate should never exceed the standard of six annas.

The above rate the Conference recommend for lands yielding staple crops, but with regard to special crops they believe that the rent will be, as it now not unfrequently is, regulated by mutual contract, but where contracts may not have been executed, they would recommend one-fourth of the average annual value of the gross produce calculated as above, the process being the same that is proposed in Section 21 of Mr. Reynolds' Bill for rent in kind.

38. In making the above recommendations the Conference wish it to be distinctly understood that they would omit all grounds of enhancement, contained in the existing Acts or in the proposed Bill, as they are calculated only to give rise to misunderstanding, dispute, and litigation, and are unworkable in practice, and that in all suits for enhancement of rent and in all settlements of rent the rent should be raised to the value of 6 ans. of the produce unless the rent thus enhanced exceeded double the previous rent in which case the increase should be double the existing rent. The rule laying down the proportion of the produce for the zemindar and ryot would be simple, intelligible, and easily workable.

39. As for enhancement of rent on measurement this is a separate matter and ought to be dealt with separately. The landlord ought always to have the right of enhancement on measurement, if more lands be found in the possession of the ryot than what he is entitled to hold, and the ryot should also have the right to obtain abatement, if the area of his holding be diminished by diluvion. This ground of enhancement or abatement of rent should be allowed operation even within the period of ten years, for which the settlement of rent may be fixed.

40. As for the rent of pasture lands (Explanation II) the Conference are of opinion that the determination of it ought to be left to the mutual agreement of the landlord and tenant. The principle of adjacent rent is misleading, for the rate prevailing for arable land in the vicinity may be very low, and it cannot be just to perpetuate the rate.

41. The Conference do not consider it necessary to comment on the illustrations and explanations contained in this section, as their suggestions cover the whole ground of enhancement. For the same reasons they will not remark on section 23.

42. Section 25. The Committee have in their remarks on section 22 noticed the question of abatement of rent on the ground that the quantity of land held by an occupancy ryot has been shewn by measurement to be less than the quantity for which rent has been previously paid by him. The Conference are of opinion that the other

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two grounds ought not to apply, as the currency of rent for ten years when once fixed is intended to close all questions for enhancement and abatement of rent for that period The currency of ten years would be meaningless, not to say unfair, if the landlord were restrained from increasing rent for excess land during that period, while it will be competent for the ryot to claim during the same period abatement of rent on the ground of diminution of land.

While upon this subject the Conference would notice the question of boundaries. In this country where the lands are seldom fenced, the boundaries are nominally described as mere marks, which are liable to be changed by freak of nature or fraud of man. Thus the boundary on one side may be a khal or river or bheel, which may recede and throw up good arable land, the boundary described remaining all the same. In like manner the boundary on another side may be the khamar land of the zemindar, but the ryot may encroach upon it, and may be thus enjoying a portion of the khamar land, his boundary technically remaining the same. Again, the boundary of one jote may be the boundary of another, and by a deceitful understanding between the holders of the two one may appropriate a portion of the holding of the other without paying increased rent, and the other may claim abatement for diminution of land, the boundaries still remaining the same. All these contingencies would arise, if Illustration *c* of Ground (2), Section 22, of Bill No. 2, should be enacted into law. It runs as follows:

(c)—A was let into possession of a holding in 1860 under a written lease, which describes the holding as comprising 37 bighas of land and gives the boundaries. The land is situated in a cultivated village, and the boundaries are ascertainable and definite. In 1880 the land within these boundaries is measured and found to be 45 bighas. A is not liable to pay enhanced rent in respect of the 8 additional bighas found to be within the boundaries stated in his lease.

The decisions of the High Court on this question are conflicting. The Conference think it would be equitable that when the quantity of land is described in a lease, any excess discovered on measurement should be subject to assessment or enhancement, and any diminution or deficiency in like manner to abatement, notwithstanding the boundaries described in it.

43. Chapter IV. This chapter considerably interferes with the discretion of the landlord in dealing with the tenant-at-will. According to Section 26, the landlord will have no right to evict such a tenant without the intervention of the court, and if he holds over after the expiry of his term with the consent of his landlord, express or implied, he shall not be liable to be ejected unless a notice to quit has been served upon him, (Section 27), and if after service of notice he refuses to quit from the first day of the year next ensuing after service of such notice, or if he refuses to give up land upon the expiry of his term and has not the consent, express or implied of his landlord to hold over, the landlord may sue him within three months after expiry of his term for ejectment, such ryot when ejected shall be liable for the full letting value of the land and for such damages or loss as the landlord may have sustained in consequence of his recusancy, (Section 28). These provisions, the Conference fear, will encourage the tenant-at-will to hold over in spite of the wish of the landlord to the contrary, not to say to collude with the amla of the latter. The Conference are of opinion that exemplary penal damages ought to be imposed upon the tenant for his refusal to quit after service of notice, in order to check or prevent wilful recusancy. Then, again, the Conference do not see why a tenant-at-will should have a right to maintain a suit against his landlord for the determination of the rent at which he

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shall be entitled to continue to hold or occupy and cultivate land or for abatement of the rent previously paid by him. It ought to be at the discretion of the landlord to fix the rent, and if the tenant does not accept it, he need not continue; he can relinquish the land at his own pleasure. The Conference would, therefore, recommend the omission of this provision.

44. Furthermore, clause 2, Section 29 provides that when a tenant-at-will has been served with a notice to quit, if he does not relinquish the land he shall not in any case be liable to pay more than double the former rent. The tenant-at-will will then become a privileged ryot through his own laches or recusancy, a result which cannot surely be contemplated by Government. It is not apparent why the landlord's right to fix the rent of the tenant-at-will at his discretion should be barred in this way. He has always exercised the right, and it would be gross injustice to him, if it were arbitrarily withdrawn. The limitation of the demand of the occupancy tenant upon his sub-tenant is also not fair. If he is allowed to sub-let, surely he ought to be allowed to sub-let at such rent as may suit him. It will be at the option of the sub-tenant to accept or not the terms offered to him. The freedom of contract ought not to be interfered with.

45. Chapter V. This chapter relates to the use of land for building purposes It contemplates to concede valuable rights to the non-agricultural population to the detriment of the landlord. The Conference do not see what special claim has the non-agricultural population to the consideration of the landlord. If a cultivating ryot wishes to build a habitation for himself and his family, the custom is that he should obtain the permission of his landlord, and there is no good and valid reason why that custom should be departed from. Under the existing law twelve years' possession gives him the right of occupancy, if he has not already protected himself from eviction by a lease. So that the position of the agricultural ryot is safe enough. But it does not stand to reason that a tenant who takes land for a manufactory or shop should have this right. If he erects a valuable building upon it, he generally takes care to secure a long lease, and no practical difficulty has occurred in matters of this kind. But to declare, as Section 32 does declare. that a tenant in the immediate possession of such land, whether holding under or without a lease for the full period of twelve years after the commencement of the proposed law, shall in the absence of any contract to the contrary acquire a right of occupancy in such land and shall not be liable to be ejected, would be to make a serious and most unjustifiable encroachment upon the proprietary right of the landlord. It is added that the interest of the person, who has so acquired a right of occupancy shall be heritable, transferable, and devisable, and shall be liable to sale in execution of any decree of the civil court. This, the Conference submit, would be tantamount to a confiscation of the rights of the landlord, particularly in towns, market-places, and centres of business where land is very valuable. The limit of maximum rent fixed in Section 33 is also arbitrary. They would, therefore, suggest that this chapter be omitted.

46. Chapter VI. Merger This chapter, the Conference consider, is an improvement upon the existing law, but they are of opinion that when the deed declaratory of the intention of the owner of an estate as to the status of an inferior tenure acquired by him, is to be registered, the provisions requiring proof that a copy of such deed was published in the manner provided in sub-clauses 4 and 5 of clause (*a*) of Section 203 for the notification therein mentioned should be dispensed with. This double precaution is by no means necessary. If a deed is registered, surely it cannot be necessary to publish it again, not to say that to require evidence as to publication would open a

wide door to litigation. The Conference would further suggest that an occupancy holding purchased by the landlord should be included within the scope of this chapter, and that a minor when he attains to majority should have the right to make a declaration of the nature mentioned. The period of three months prescribed in the proviso to Section 34, clause (*b*), is too short. It will take the people sometime to acquaint themselves with the provisions of the law. The period ought, therefore, to be either one year or at least six months.

47. Chapter VII relates to the registration of transfers of tenures, under-tenures, and occupancy holdings. The Conference are in favour of the registration of the transfer of tenures and under-tenures, but as they are opposed to a recognition of the general transferability of occupancy holdings, they would restrict these provisions to the transfer of holdings recognised by local custom and those by succession and sale in execution of a decree for arrears of rent. The period of six months allowed in Section 37 for application for registration from the date of transfer is too long. It is proposed to make the rent for a year payable in four quarterly instalments, and to give the andlord the right to sue for arrear of rent after the expiration of each instalment, but there would be much confusion if the application for registration of transfers were to be made within six months from the date of such transfer. The Conference would, therefore, recommend that this period be reduced to three months. The Conference agree to the propriety of declaring in the case of petty landlords that it will not be necessary for them to keep elaborate forms, for which they cannot be expected to afford necessary establishment, but that in their case the acceptance of rent should be deemed equivalent to registration of transfer, (Section 46, para 2). But this paragraph is not explicit. The Conference would recommend that this provision should apply to those landlords only who might collect their rents without the agency of gomashtas and give rent-receipts under their own hand.

48. Chapter VIII. refers to rent, instalments of rent, receipts of rent, deposit of rent, apportionment of rent, and hypothecation for rent. The Conference agree to four quarterly instalments, but they are of opinion that where the rent is now payable by contract or custom in less than 4 instalments such contract or custom should be recognized. There is no provision in Draft Bill No. 2 for the preservation of the counter-part of a rent-receipt, which the original Bill contained. This is a very important item of evidence in a rent-suit, and ought to be recognized by law. Not only receipts but collection papers have been declared to be admissible as evidence. In a case reported in 22 W. R. p. 549 it was held that collection papers were admissible not merely as corroborative but also as independent evidence in certain cases. The application for payment of the rent deposited in the Collectorate should be written on plain paper. Section 53 is silent on this point. Surely it cannot be just to tax the landlord for taking out from the Collector's Office the rent lawfully due to him. The land as well as the crop ought to be held in hypothecation of rent. The distraint clauses recognize the hypothecation of the crop for rent, and it is meet that a declaration on this point should be made in this chapter.

49. Section 56, clause *b*. The provision of this Section will seriously interfere with the right which the landlord is admitted on all hands to possess, the tenure being hypothecated for rent. It will give the landlord only the first charge on the proceeds of the sale of the tenure and will thus reduce his right to that of a first mortgagor. As the tenure sold in execution of a decree for money will be sold with encumbrances, it will not fetch a high price such as it will undoubtedly do when sold for arrear of rent,

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and necessarily free of encumbrances as now, and the small return of sale under the proposed section may make the landlord a loser. The Conference see no reason why the present law on the subject should be varied.

50 Chapter IX.—This chapter relates to coparceners. It enacts that when coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued or is likely to ensue (a) inconvenience to the public or (b) injury to private rights, the District Judge may upon the application in case (a) of the Collector, and in case (b) of any one having an interest in such estate, tenure or under-tenure direct a notice to be served upon all coparceners, calling upon them to shew cause why they should not appoint a common manager. In the explanation annexed to this section it is stated that the application may be made either by one or more of the caparceners themselves or by any other interested person. Then will follow a sort of summary investigation by the Judge, who if satisfied that sufficient cause exists for the appointment of a common manager will call upon the coparceners to appoint such a person within one month from the date of his order, and if they should fail to do so, the Judge may direct that the estate, tenure or under-tenure may be taken over by the Court of Wards, if the Court assents to undertake the management, or may directly appoint a manager, who may be one of the coparceners. The Lieutenant-Governor may appoint a person for any district to manage all estates, tenures and under-tenures to which the provisions of the chapter will apply. A coparcener is to be barred from suing for his share of rent separately with these exceptions, (1) where the tenant has contracted to pay a share of the rent separately, (2) where the tenant has been in the habit of paying a share of the rent separately, (3) where a coparcener cannot get his share of rent in consequence of collusion. It is further provided that a single coparcener may not bring a tenure to summary sale. or measure the lands, or enhance the rent of the tenants.

51 The Conference are of opinion that whatever the evils of joint management of estates and tenures, they will be far outweighed by the proposed system, which will introduce management by delegates unconnected with the owners of estates or tenures. It will destroy all motive to individual exertion and energy, and neutralize the advantage of an independent body of individuals engaged in the practical management of their own property, and forming a connecting link between the State and the masses. When a stranger is appointed manager of an estate, the members of the joint family, to which it belongs, will naturally lose all opportunity of learning the business of managing their own affairs, and therewith their position and prestige among their tenantry, and indirectly in society. The coparceners will become mere annuitants, a position by no means agreeable to those, who possess energy and independence of character. The considerations which led the Government in 1873 to propose the appointment of a common manager to joint estates were, 1stly, the hardships and harassment to which the ryots were subjected in consequence of the separate demand upon the tenants for their dues, 2ndly, the inconvenience and wrong to weak and uninfluential coparceners. As regards the first the provision, made for the deposit of rent, the Conference submit, will remove the hardships of ryots, who in case of dispute among coparceners or for other reasons will be at liberty to deposit the rent due to one or more coparceners. As regards the second, it is a case of individual wrong, and the person who might suffer such wrong should have recourse to the ordinary law of the land for redress. It would be most unreasonable if the court were set in motion on the application of a single person interested—he may be a squatter on the land, but he will still come under the designation of " a person interested,"—and the coparceners put to trouble and expense, and at the discretion of the court deprived of one of their fundamental rights as members of society, that is to say, the management of their

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own property. The Conference do not clearly understand the provision that the Collector may move the District Judge when the joint management of an estate causes "inconvenience to the public." If by this is meant inconvenience to the tenantry, their case as observed above is met by the facilities offered for the deposit of rent. But the Conference cannot conceive in what way the "public" may be inconvenienced by the joint management of an estate, and what that inconvenience might be, which would justify such an extreme step. If the coparceners default in the payment of revenue, their estates will be liable to sale. If they transgress law, or fail to comply with pubic requisitions, their responsibility is easily traceable under the operation of the new Registration Act, and they will be liable to punishment. But it is not clear why they should be deprived of the management of their own property, because the Collector thinks that it causes "inconvenience to the public." As there seems to be no just necessity for interfering with the management of joint estates, the Conference would suggest that this chapter be omitted.

52. Chapter X. relates to miscellaneous rights of landlords and tenants. Section 71 declares in what cases and under what circumstances a tenancy is determined as between the parties thereto. Clause 4 says that in the case of a non-transferable holding the tenancy will be determined by abandonment, when the tenant having ceased to cultivate the land or pay rent therefor, has absented himself from the neighbourhood and the landlord elects to treat the tenancy as determined. The Conference are of opinion that this provision should be made applicable to occupancy holding inasmuch as it cannot be sold without a decree of court, and no court would give a decree unless the whereabouts of the defendant are ascertained and some attempt made to serve the summons upon him personally. It is now left indefinite as to when the landlord would be entitled to let the land to a new tenant; it is necessary that this point should be cleared up. The Conference would, therefore, suggest the introduction of a provision to the effect that the landlord should have the right to let the land to a new tenant at the cultivating season, if the ryot in possession has absconded from his village and made no arrangement for the cultivation of the land or has not signified to the landlord in writing his intention to return. They would also recommend that where there may be a contract for the determination of a tenancy on the breach of a stipulation the contract shall be binding. Section 72 provides that in case a ryot is ejected in execution of decree he shall be entitled to tend, reap, gather and remove the standing crops, and in the event of his so doing he shall be liable to pay a "reasonable rent" for the time during which he uses the land as aforesaid. It is meet that the ejected tenant should not be allowed to remove the crops without first satisfying the arrears of rent due from him before ejectment and paying reasonable damages for occupation of land before the crop is reaped.

53. Chapter XIII. refers to limitation. As the third schedule annexed to Section 98 is not printed, the Conference reserve their opinion on the subject.

54. Chapter XIV. treats of distraint. The scheme of distraint provided in Draft Bill No. 2, the Conference submit, will not in the least facilitates the recovery of rent. Mr. Reynolds remarks, "it virtually provides a procedure which (as far as current rents are concerned) will have the effect of a summary *ex parte* trial." But what will be the practical effect of this procedure? In the first place an application in writing (which shall be liable to a court-fee the same in amount as would be payable in a suit instituted for the recovery of arrears of rent) should be made by the landlord with such documentary evidence as he may consider necessary for the purpose of such application (Sections 104 and 105). The Court may examine the applicant or his duly constituted

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agent, and if it consider the application inadmissible, it may reject the application, or in its discretion permit the applicant to furnish additional evidence in support of such application. Knowing how technical the courts are the Conference would not at all be surprised, if this *ex parte* suit should drag its slow length along in the usual way, and by the time the order may be given, if it be at all given, the crops on the land will have been removed and the landlord defrauded of his legitimate dues. The Conference fear that the proposed scheme of a preliminary suit for distraint of crops will be no improvement upon the present plan, while it will burden the ryot with the costs of a second suit. They would, therefore, recommend that the present system of distraint be retained with the addition that as the produce of the land is hypotheticated for rent by whomsoever it might be grown, it should be liable to distraint, and that if it should belong to a sub-tenant, he should be competent to pay in the rent due, and to deduct the same from the rent payable by him.

55. Mr. Reynolds' Bill concludes with the chapter on distraint. It does not include the chapters, which relate to procedure. Mr. Reynolds' memorandum closes with the following remarks : " A question of more general importance is whether the summary procedure of the putnee sale law should not be extended to all permanent tenures and under-tenures. In paragraph 174 of their Report, the Commissioners have stated their reasons for thinking that any more summary procedure for the trial of rent suits than they have proposed in Chapter XVIII of the Bill, would be retrogressive and unsafe Those who dissent from this conclusion may reasonably be asked to point out the steps in the procedure which might, in their opinion, be safely dispensed with. But with regard to the class of cases which is most numerous, and in which a prompt decision is of most importance to the landlord—suits for the recovery of arrears of rent —it will perhaps be found that the scheme of distraint which has been introduced into the Bill will prove an efficient substitute for a regular suit." The Conference have carefully considered the abbreviated procedure recommended by the Rent Commission, and they do not hesitate to say that it does not at all simplify the present procedure. There will be the same law's delay, the same room for legal technicalities, the same harassment, trouble and expense as now. The Conference are of opinion that it would greatly facilitate the recovery of rent, if the putnee sale-law procedure were made applicable to suits for the recovery of current rent from occupancy tenants, and the bill of exchange procedure adopted in Mr. Mackenzie's Rent Bill of 1879 applicable to the recovery of current rent from non-occupancy tenants. They need not go into details; the prominent features of the two systems are well known. In both cases a regular suit should be allowed to contest the summary decree. This, the Conference submit, will guard against possible injustice under the summary procedure. As a further preventive of false and vexatious suits, the rent-receiver who may bring such a suit may at the discretion of the Court be cast in damages. The necessity for a simple and summary procedure for the realization of rent has been so often urged by the British Indian Association and also acknowledged by Government that they will not repeat what they have already said on the subject. But they submit that while the primary object of the revision of the Rent-law was to simplify the procedure for the realization of arrears of rent, nothing of any practical significance has been attempted in this direction. They sincerely and earnestly hope that their suggestions under this head will be duly taken into consideration by His Honor the Lieutenant-Governor.

56. There is one question, which remains to be considered, *viz.*, that of sub-letting. The Conference have carefully considered this question in all its bearings, and they must confess that it is surrounded by many practical difficulties, which cannot be easily

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solved. With a view to discourage sub-letting, draft Bill No. 2 provides (Section 18 Explanation (3), clause *e*,) that a korfa ryot will not acquire a right of occupancy and that a ryot who sublets shall not be entitled to demand as rent from his under-tenant more than 30 per cent. of the gross produce of the land, (Section 30). The Conference have little sympathy with those ryots, who do not cultivate their own lands, but let it out to others; at the same time they think that there are circumstances such as temporary absence from home, sickness, minority, widowhood &c., which necessitate a recourse to sub-letting for the ryot's own interest and welfare. The Conference are, therefore, of opinion that though steps may be taken to discourage sub-letting, it will not be practicable to prohibit it altogether. They would not, therefore, recommend any interference with the present practice.

57. The Conference do not consider it necessary to make any remarks regarding the preparation of table of rates for each district, because their suggestion for the determination of rent by a division of the gross produce of the land between the landlord and tenant dispenses with the necessity of the table of rates. They need hardly remark that the provisions relating to the preparation of tables of rates do not commend themselves to their approval, inasmuch as they involve a direct interference of the executive fiscal agency with the determination of rent, which was not contemplated by the Permanent Settlement laws as shewn in Mr. Harington's Analysis of the Regulations.

58. The Conference have abstained from commenting on Chapter XI, which relates to Behar, as they are informed that the Behar Landholders' Association propose to address Government separately on the subject.

I have the honor to be,

SIR,

Your humble and obedient servant,

KRISTODAS PAL,

Secretary.

BRITISH INDIAN ASSOCIATION ROOMS:
No. 18, *British Indian Street,*
Calcutta, 18*th April* 1881.

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I BEG to submit the following remarks on the letter of the British Indian Association, dated the 18th April 1881, on the draft Rent Bill.

2. The Association are of opinion (paragraph 9) that no occasion has arisen for a change in the substantive law of rent. This is a question of public policy, which can only be decided by the authority of the Government; but I am somewhat surprized to read that, until the appointment of the Rent Commission, not a voice had been heard calling for a change in the law, and that not a single instance had occurred of the administrative machinery coming to a dead-lock in the absence of such a change. I remember, and the Association must surely remember, the circumstances which led to the passing of the Agrarian Disturbances Act in 1876. That Act was passed at the instance of the landlords, and it effected not merely the procedure, but the substantive law.

3. In their 12th paragraph the Association refer to the testimony borne by the Lieutenant-Governor to the prosperous condition of the peasantry of Eastern Bengal, as a proof that no change in the existing law is required. Upon this it may be remarked that among the memorials recently presented to Government, one is from ryots of the Tangail sub-division in Mymensingh, who complain bitterly of the grievous oppressions and exactions which they suffer from their landlords under the present law. At the same time, I am ready to admit that, if the eastern districts alone were concerned, the ryots would probably be as well off under the law as it stands, as under any amendment of it which is likely to be carried. In the greater part of those districts the grievance is that the zemindars are practically unable to obtain that enhancement of rent which the theory of the law allows them. But if the landlords desire this grievance to be redressed, it is unreasonable that they should object to the opportunity being taken to remove other practical anomalies, which the law was not intended to produce, but which have been found to result from the working of it. It must be added that the Association have attached to the Lieutenant-Governor's words a meaning which they were not intended to bear, and have quoted expressions, which were applied only to the cultivating classes of the eastern districts, as a testimony to the prosperous condition of the peasantry throughout Bengal.

4. In the 17th and following paragraphs of their letter, the Association set forth their objections to the definition of the right of occupancy suggested in the Bill. As they make no positive counter-proposal, it is to be assumed that they desire to retain the existing law, although they declare it to be a direct infringement of the landlord's rights.

5. I do not propose to follow the Association through their review of the historical aspect of the question, as I feel that I could add nothing to the lucid and masterly exposition of the law which has already been given by Mr. O'Kinealy. It is a question upon which no interested person is in the least likely to be convinced by argument, and upon which it is unfortunately the easiest thing in the world to adduce a string of respectable authorities either on one side or on the other. The Association are not to be blamed for quoting those opinions only which support the cause which they have undertaken to defend. But the opinions of Sir G. Campbell and Mr. Seton-Karr were diametrically opposed to those of Sir Barnes Peacock and Mr. Loch. As to Mr. E. T. Trevor's opinion, I suppose there is no doubt that Act X of 1859 conferred new rights upon pykast ryots. The question is whether it did not take more from the khoodkasts than it gave to their pykast brethren. It may not have been intended to have any such effect. The framers of the law may not have contemplated any interference with the venerable common-law rights of the khoodkast ryot. But in practice there is no doubt that the

customary right has been obliterated by the statutory definition. I have myself heard more than one Judge of the present High Court express an opinion in conversation that the only right of occupancy existing at the present day is the twelve years' right conferred by the 6th Section of the Act of 1859.

6. It admits, I believe, of conclusive proof (to the satisfaction of all persons capable of understanding or willing to listen to argument) that by the ancient constitutional law of the country the right of occupancy was inherent in the status of the khoodkast ryot, and was not confined to the representatives of those khoodkast ryots who held at the time of the Permanent Settlement. The khoodkast ryots, as Sir John Shore tells us, are those who cultivate the land of the village in which they reside. The definition suggested in the revised Rent Bill has no other object than to restore and declare this ancient right; but to do so in words which shall effectually protect the enjoyment of the right from being destroyed by unscrupulous landlords or defeated by technical quibbles. I should have no objection to any other definition which would equally secure these ends. But, in framing the definition, it must not be forgotten that it is now the avowed object of the zemindars to restrict and destroy the right, and no loop-hole should be left which will allow of this being done.

7. If we adopt the principle that the occupancy right shall attach to those ryots who cultivate the lands of the village in which they reside, we are met by the difficulty of answering the question—"What is a village?" And it is not sufficient to say that every resident of the village knows perfectly well who the resident ryots of the village are. The decision of the question will not lie with the residents, and we must be prepared, as I have already remarked, to provide against every kind of evasion and chicanery. Let us see what would be the practical effect of making the village what Mr. Macdonnell calls the envelope of the occupancy right.

8. A village called Rampore contains two mehals, Nos. 99 and 100, on the towjee. Deenonath, a ryot, cultivates lands of both mehals, but his residence is in mehal No. 99. Is he to have the occupancy right as regards his land in mehal No. 100? The zemindar of No. 100 will say—"No; the man is not a resident of the village. It is true that he resides in a village which happens to bear the same name, but that village is totally distinct from *my* village of Rampore." I think it is at best doubtful how a Moonsif would decide such a point as this, and the question is still further complicated when we take into account the existence of kismuts and tolahs. Is kismut Rampore or Rampore Puschimtolah the same village as mouzah Rampore?

9. Shall we then say that all lands, which have been measured by the Revenue Survey in one hulka, are to be considered for the purposes of the Section as one village? I should not greatly object to this rule, if no better can be devised; but I do not think it altogether satisfactory. The zemindars would not be any better pleased with it than with the definition in the Bill as it stands, and the objections to adopting it lie upon the surface. The Survey boundary was not made with any idea of its forming a definition of residence, and villages which are really distinct were sometimes lumped together merely because it was more convenient to show them in one map. It would further have to be considered how such a definition would meet the case of lands (technically called *chitta* lands) belonging to one village, but situated within the Survey boundary of another village. Such plots of land are extremely common.

10. A suggestion has lately been made that a ryot who has resided 12 years on an estate shall have a right of occupancy in all lands which he holds in that estate, but that, as regards other lands, he shall be left to acquire the right by 12 years' continuous occupation under the present rule. I sincerely trust that this suggestion will not be accepted, as I believe that it would lead to the extinction of half the occupancy rights in the country. The zemindars have shown their hand sufficiently to justify us in saying that they are prepared to adopt *any* measures which will have the effect of barring or destroying occupancy rights. I therefore object to any rigid limitation of

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time, whether the term be 12 years or any other, and I desire to represent that the multiplication of estates will render it a matter of no great difficulty for zemindars to refuse to lease homestead lands to the ryots of their own estates. A zemindar will say—"You may have these fields for cultivation, but you must find a residence on some other estate, and I will take care that you do not hold these fields for 12 years." Moreover, the principle which underlies the suggestion is manifestly inapplicable to the case of those ryots who do not hold directly from the zemindar. What privity of interest is there between a zemindar and the ryot of a putneedar in the zemindar's estate? To make the rule consistent, and indeed intelligible, it ought to provide that the occupancy right shall belong to those ryots who reside on the lands of their landlord, and it is needless to point out how great a contraction of the right such a rule would involve.

11. The remarks which the Association offer, in the 20th paragraph of their letter, on Section 18 of the revised Bill, appear to be founded on some misconception of what the Bill really proposes to enact. The Section confers no rights on temporary squatters or land speculators. Its operation is confined to ryots who have their fixed habitation in the village or estate, or in the immediate vicinity. The only point in which the explanation can fairly be said to go beyond the principle recognized in the old Regulations, is in the introduction of "the estate" as one of the factors of the definition, and it is understood that the zemindars (or some at least of them) profess themselves willing that the right shall be enjoyed by ryots of the estate. But if it is urged that in this respect the definition is too wide, I would consent to the words "or estate" being struck out of the explanation. But I would on no account abandon the two-mile limit, which I consider a necessary provision to ensure the maintenance of the spirit of the old rule that the resident cultivator of the lands of the village possesses the occupancy right.

12. In paragraph 21, the Association propose that a zemindar should be allowed to acquire an occupancy right in land which is a portion of his estate, on the ground that, if he loses his estate, he will at least have the occupancy holding to keep him from absolute penury. If there were any force in the argument, the rule should at any rate be confined to allowing the zemindar to possess the right in *one* holding of his estate, and no more. But, in fact, the cases in which a dispossessed proprietor would desire to adopt the status of a cultivator are so extremely rare, that it is unnecessary for the Legislature to take them into account. It would be most unreasonable to allow the zemindar to buy up the occupancy holdings on his estate, and to keep them in his own hands as an occupancy ryot, upon the remote possibility that some day he might lose his estate and might desire to cultivate some one of the holdings which he had appropriated.

13. The Association express strong disapproval of Section 19 of the Bill, which prevents the ryot from contracting himself out of the acquisition of the occupancy right. It is natural that they should do so, for without this section the other provisions would have little practical effect. An unfettered contract law, it is stated, is the basis of civilized life, and the primary condition of moral and social progress. The aphorism is worthy of Joseph Surface, and I regret that the Association should have stooped to employ an argument which they must have known to be altogether sophistical. Free contract between ignorance, poverty, and improvidence on the one side, and cunning, wealth, and power on the other, is likely to result in the conclusion of a somewhat inequitable bargain. With regard to this Section, I sincerely trust that no concession of any kind will be made.

14. The next question discussed by the Association is that of the legal incidents of a right of occupancy. There are historical grounds for saying that the right was not originally transferable by sale, by gift, or by will, though no doubt the reservation made in 1793 would fully justify the Legislature in declaring it to be so transferable now, if good reasons for the change could be assigned. But it appears that the zemindars are very strongly opposed to an unrestricted right of transfer, and I am willing to admit that

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their objections are not unreasonable. I think the Government might consent so far to modify the Section, as to make the right of transfer dependent upon the consent of the landlord, a power being at the same time reserved to the tenant to bring a suit to compel his landlord to recognize a transfer, or to assign reasons to the satisfaction of the Court for his refusal. This, however, should not be allowed to interfere with the operation of any existing custom, by which the right may at present be transferable in any particular locality.

15. The Association enter at considerable length into the question of enhancement, but they finally recommend that all the grounds of enhancement should be omitted, and that the ryot's rent should be fixed at $\frac{3}{8}$ths of the money value of the gross produce. The scheme is not so clear as could be desired upon two points of some importance: first, whether the proposal is to operate in reduction of such existing rents as are in excess of the $\frac{3}{8}$ths share; and secondly, whether the Courts are to enforce contracts in future, in which a higher rent than $\frac{3}{8}$ths of the gross produce may be stipulated for. Until these points are cleared up, it can hardly be said that the Government is in complete possession of the views of the Association on the subject.

16. The scheme is no doubt recommended by a certain simplicity. It could easily be worked, and it would have the effect of putting a stop to further enhancement in Behar, and in considerable portions of Western and Central Bengal. But when we consider the great inequalities of existing rents, it seems to me somewhat visionary to suppose that any uniform proportion can be made applicable to all parts of the country. It is said that in some parts of Backergunge rent is now $\frac{1}{40}$th of the gross produce. By the plan of the Association it would be raised to $\frac{15}{40}$th. It is true that it is proposed that there should be an interval of ten years between any two enhancements, and it would therefore take 30 years for the full rate to be reached in Backergunge. But it may be doubted whether the Government could contemplate with equanimity the possible consequences of passing a law which would have the effect, in any part of the country, of increasing rents fifteenfold within the space of a single generation. If the Lieutenant-Governor is at all inclined to accept the plan of the Association, I would suggest that the period between two enhancements should not be less than 30 years, which is the term proposed by the Famine Commissioners. Even with this modification, rents throughout Eastern Bengal would be doubled at a stroke. On the whole, I do not think that the proposal of the Association should be adopted, and I must confess to a feeling of some surprise that the zemindars of Behar, Hooghly, and Burdwan should have been induced to support it. I may remark here that I do not understand the meaning of the last clause of paragraph 37 of the letter. The ryot who cultivates paddy is to pay three-eighths of the gross value of his crop. The ryot who cultivates sugarcane is to pay one-fourth of the gross value of a crop of paddy. It seems hardly possible that this can be what the Association really intended to recommend, though this is the plain meaning of the language which they have used.

17. In the 42nd paragraph of their letter, the Association criticize the wording of illustration (*c*) of the second ground of enhancement in Section 22. This illustration has been so strongly objected to, while at the same time the principle of it is so manifestly just, that it is reasonable to conclude that it is not very happily worded. It might perhaps be recast, so as to make it clear that it will not apply to cases in which the lands are let at a certain rate per beegah, but only to cases in which a holding within definite boundaries may have been let at a lump sum, though the area, or supposed area, may be incidentally mentioned in the agreement.

18. In their remarks on Chapter IV, the Association are mistaken in supposing that the Bill gives a tenant-at-will any right to maintain a suit against his landlord for the determination of his rent, or for abatement. The provisions of Section 28 appear to me to be sufficiently stringent, and I would not increase their severity. The limitation to double the former rent in Section 29 does not seem unreasonable, when it is remembered that the rent may be doubled every year without any other reason than the landlords

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pleasure being assigned. By the law, as it stands, the landlord is required to specify the grounds of enhancement, and the tenant cannot be required to pay more than a reasonable rent. The changes introduced by the new Section are decidedly for the benefit of the landlord. The limitation of the demand upon under-ryots is necessary as a check upon excessive sub-infeudation.

19. With regard to Chapter V, I have already expressed an opinion that Sections 32 and 33 ought not to apply to lands situated within the boundaries of any municipality. If this point were conceded, I do not suppose the objections made to the chapter would be pressed.

20. The remarks offered by the Association on Chapter VI do not raise any question which cannot be sufficiently discussed when the Bill is in Select Committee. The same remark applies to paragraph 47 of the letter, which deals with the provisions of Chapter VII.

21. I concur in the remark made in paragraph 48, that where rent is now payable by contract or custom in less than four instalments, such contract or custom should be recognized. For the reasons given in my former Memorandum, I do not agree with the suggestion regarding the legal obligation to preserve counterparts of rent receipts. With regard to Section 53, it is to be observed that the Bengal Council is not competent to pass any law affecting the Stamp Act, or to declare that the application for the payment of a rent deposit shall be made upon a plain paper. It would rest with the Governor-General in Council to grant such an exemption. I am somewhat surprised to find, from paragraph 49 of the letter, that clause (*b*) of Section 56 is objected to as interfering with landlords' rights. A reference to paragraph 133 of the report of the Rent Commission will show the clause was framed entirely in the interest of the landlords, and with the object of giving a priority to the landlord over other creditors. I cannot but think that the objections urged by the Association have been advanced under some misconception of the true bearing of the clause, but if it is really the fact that the landlords do not wish for the clause, there cannot be the smallest objection to its being omitted.

22. The remarks made by the Association on Chapter IX imply, if they do not assert, that the provisions to which objection is taken are innovations upon the existing law. A reference to Articles 16 and 60 of Mr. Field's Digest will show that this is not the case. In fact, the principal novelty in the chapter is that it extends to tenures and under-tenures the rule which Regulation V of 1812 restricted to estates paying revenue to Government. It is true that the law regarding the institution of suits by co-parceners for arrears of rent and for enhancement of rent is in a somewhat unsettled state, and I understand that this question is at present under the consideration of the High Court; but in this respect the Bill does nothing more than reproduce the law as it stands, according to the most accepted interpretation. The special objection taken by the Association to the power given to the District Judge to interfere in cases where disputes among co-parceners cause "inconvenience to the public" is sufficiently met by a reference to the Regulation of 1812, from which the words in question are simply reproduced. All that the Bill has done is to provide a plain and effectual procedure for carrying into effect the object of the Regulation.

23. The proposal (in paragraph 52) that the landlord shall be entitled to re-let an occupancy holding in any case in which he may choose to consider it to have been "abandoned," is open to the strongest objections. It is extremely improbable that an occupancy ryot would really abandon his holding, and it is entirely incorrect to say that the landlord would have any difficulty in serving a summons on his tenant. The point is specially provided for in Section 174 of the Bill of the Rent Commission I desire to call special attention to this suggestion of the Association, because, while the grievance which it proposes to redress is absolutely imaginary, it affords an excellent specimen of the kind of machinery which the zemindars would gladly put in motion to destroy the ryot's right of occupancy.

24. The chapter on distraint finds no favour with the Association, who apprehend that the delay which may be expected to occur before the issue

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of the order by the Court will make the remedy of little or no value. This will of course very much depend upon the precision and completeness with which the claim is put before the Court. It is one of the recommendations of the procedure laid down in Chapter XIV, that it gives a great advantage to the landlord who keeps accurate and systematic accounts. It is a further recommendation that it enlists the interest of the landlord on the side of the law, instead of putting him (as the present law does) under a strong temptation to act illegally. The Association would prefer that the present system of distraint should be retained. As far as Bengal is concerned, I believe that the question is of no great practical importance; but, as regards Behar, the present system of distraint is nothing less than a system of oppression and robbery, and the alternative lies between abolishing distraint altogether, or establishing some such procedure as is proposed in Chapter XIV of the revised Bill.

25. On the subject of procedure, the Association have very little to say, the chapters relating to that portion of the revised Bill not having been before them. But it will be observed that they are dissatisfied with the proposals of the Rent Commission, and that they desire to revert to that process of "choking off litigation" (to quote the language of the Report) which is involved in a summary decision followed by what is termed a "regular suit." As Chapter XVIII of the revised Bill does not materially differ from the corresponding sections of the original draft, the objections of the Association on the score of delay, technicalities, trouble, and expense, will be as applicable to one as to the other. I can only express my cordial concurrence in that admirable passage of the Rent Report (paragraph 174) in which this question is discussed. The words of the poet, that Haste is the half-sister of Delay," are nowhere more true than in judicial proceedings. Nor is delay the worst of the evils which the system advocated by the Association entails. The scheme of a "summary decree," which may be reversed by a "regular suit," is the scheme which more than any other leads itself to the perpetration of injustice, diminishes the sense of responsibility on the part of the Judge, and gives the wealthy and powerful wrong-doer an advantage over his weaker neighbour.

26. To sum up, I think it may fairly be said that the letter of the Association contributes very little to the settlement of the questions upon which their advice was asked by the Lieutenant-Governor. The difficult problem of sub-letting, upon which the practical experience of the Association might have been expected to be valuable, is discussed (in paragraph 56) in a dozen lines, and the Association can only recommend that things should be left as they are. Throughout the letter, the only suggestion of much importance is the proposal for fixing a definite share of the gross produce as the landlord's rent, and this proposal, in the form in which the Association have put it forward, appears to me to be impracticable.

27. The Association have remarked that they have abstained from commenting on the Chapter relating to Behar. Putting aside this Chapter, I suppose it may fairly be assumed that they do not object to those provisions of the Bill which they have passed over without remark. If this is the case, it is worth while to notice that no objection has been made to Sections 10 and 11, regarding the limitations of the enhancement of tenures: to Section 36, regarding estates acquired by Government: to Section 49 (*d*), regarding receipts for rent: to Section 50 (*a*), regarding deposits of rent: and to Section 69, regarding agricultural improvements. All these are important sections, and some of them involve considerable modifications of the present law.

28. It may be convenient that I should take this opportunity of noticing some communications which have reached me since the Memorandum of the 4th April was written, and which refer to the revised Rent Bill. Baboo Kishori Lall Sirkar, a Pleader of the High Court, wrote in January last to urge the advantage of making rent a share of the net, rather than of the gross produce, and some remarks on this suggestion were made in my Memorandum of the 21st February. The Baboo has now written a second letter, in which he recognizes the difficulties which attend his proposal, but he is still of opinion

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that an attempt should be made to carry it out. He suggests that the Legislature should fix the maximum limit of rent at a quarter of the gross produce, or one-third of the net produce, whichever is the less, and that it should be competent to the ryot to meet a claim for enhancement by adducing evidence that the rate claimed would amount to more than one-third of the net produce. He thinks that in Section 23(*a*) of the revised Bill, it should be made clear that the increase referred to is the net increase, after deducting the cost of cultivation.

29. A somewhat similar proposal was pressed upon me at Bankipore by some of the Behar officials. But I must own that I do not think the suggestion of much practical value, and it appears to me that the Baboo has greatly overestimated the proportion which the cost of production generally bears to the gross produce. It appears from his letter that he assumes the cost of production to be to the gross produce as five to six, and I cannot but look upon this as a very exaggerated estimate. In the papers given me by Mr. Mylne of Beheea, the profits of a ryot on a holding of 12 local beegahs (after allowing ten per cent. for risks of season) are stated to be as follows:—

	Rs.	A.	P.
Value of gross produce	410	0	0
Expenses excluding rent	151	0	0
Balance in favour of ryot	259	0	0
Rent payable to landlord	52	8	0
Net profit of ryot ...	206	8	0

This estimate is perhaps too favourable to the ryot, but I believe it to be nearer the truth than Baboo Kishori Lall Sirkar's calculation; and I think that any proposal to allow an enhancement claim to be rebutted by the tender of evidence regarding the value of the net produce would be looked upon by the zemindars as a mere device to stop enhancement altogether.

30 Nawab Meer Mahommed Ali, a zemindar of Furreedpore, concurs in the view that the right of occupancy should be given to every khoodkast ryot, but considers that the right should be restricted to those lands which lie in the same estate, and are held under the same proprietor. I have already submitted my opinion on this suggestion. The Nawab strongly objects to Section 19, as contrary to all principles of free contract and justice. He has apparently not reflected that, under certain conditions, a nominal freedom of contract may involve the greatest injustice. He is contented that the power of evicting an occupancy ryot should be taken away; but he thinks that an unrestricted right of transfer would affect landlords (and especially smaller landlords) injuriously, while it would also encourage habits of improvidence in the tenants. On the question of enhancement, he considers the limitation to a quarter of the gross produce to be fair and equitable: but he complains that the revised Bill leaves the grounds of enhancement much the same as before, and that experience has shown that these grounds are hardly capable of proof before a Court of Justice. He wishes to have a summary procedure for the recovery of current rents, and that the defendant ryot should be required to deposit the amount of the claim. The procedure which he suggests seems to me to differ very little from that proposed in Chapter XIV of the revised Bill. The remarks which he offers on illustration (*a*) of the second ground of enhancement in Section 22, only show that he has not understood the illustration. But, as I have already observed, this illustration has been so generally misunderstood, that it will be desirable to amend the wording of it.

31. While I acknowledge the reasonableness of many of the Nawab's proposals, I cannot but remark that his views on this great public question are entirely coloured by a consideration of what would be personally convenient to himself. He is a zemindar, and consequently he wishes to limit the right of occupancy by the rule of residence in the same estate. He is a zemindar of Eastern Bengal, and consequently he is satisfied to surrender

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the right of eviction, which is never exercised in the Eastern districts, and to accept the limitation to a quarter of the gross produce, which is greatly in excess of the share he is receiving at present. But he objects to Section 19, and to the retention of the present grounds of enhancement, for these are matters which affect all zemindars alike. All this is perhaps natural enough, but it seems to me to have the effect of detracting greatly from the representative value of his opinions.

32. Lastly, Mr. Worsley, the Collector of Mozufferpore, has furnished a report on the Bill, in which he objects strongly to the modification of the 20 years' presumption rule in Sections 6 and 16. After full consideration, I am disposed to think that, though it may perhaps be desirable to introduce some precautionary words to prevent the Sections from being abused, they should substantially be retained as they stand in the revised Bill. I do not think that Mr. Worsley has sufficiently reflected that the right was never meant to attach to ryots who had held for 20 years, but only to those who had held from the time of the Settlement, and that the 20 years' rule was only a means of shifting the burden of proof. It may, I believe, be said to be notorious, that in the great majority of cases in which the presumption has been successfully pleaded, it has had the effect of defeating a just claim, and of establishing the ryot in a status to which he was not really entitled. Mr. Worsley's second objection is that the alteration of the Section overlooks the practice which zemindars adopt of purposely making default in the payment of Government revenue, and of re-purchasing their estates at auction in the name of some servant or relative. With all respect for Mr. Worsley's experience, I venture to doubt whether any such practice is at all common. The law does not recognize such *benamee* purchases, and the zemindar would hardly care to risk the wish of the servant or relative turning round upon him, and insisting upon retaining possession of the estate. It may be added that the Section only declares that the presumption shall not be pleaded against the auction purchaser. This provision would not assist a zemindar who purchased his own estate through a relation or servant, and then got it transferred back to himself.

33. With regard to other Sections of the Bill, Mr. Worsley expresses decided approval of the introduction of the limit of distance in Section 18, and of the provisions of Section 19. It may be doubted whether he is right in saying that under Section 20 there will be two classes of occupancy ryots. It is of course not intended that Chapter III of the Bill should exclude ryots who do not come within the definition of Section 18, but who may have already acquired a right of occupancy under the existing law. The status of such ryots is effectually protected by Section 2. But I believe that in practice it will be found that all such ryots actually fall within the definition of Section 18, if the present wording of that Section is retained.

H. J. REYNOLDS.

The 28th April 1881.

P. G—Reg. No. 1308J - 132 7 5-81

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To H. H. the Lieutenant-Governor of Bengal.

YOUR HONOR,

We have the honor to forward a Petition of Ryots and Subjects against the new proposed Rent Law, and in favor of the Old Settlement Land Laws—the embodiment of freedom to the Ryots. But in doing so we are obliged to draw your Honor's attention to the extraordinary clause in the new proposed Rent Law,—that of doubling the rent every 10 years.

It has of late been the object of two of the most enlightened nations of Europe—(we mean France and England) to lower the price of food to the million, the poorest of the people. Each nation has done it after its own fashion, believing it is the greatest duty of the State. We need not point out to your Honor that the above clause, if strictly acted on, would bring on famine, and stop all export trade; and therefore, we respectfully submit, it is imperative that it be struck out.

In accordance with the above, we beg to shew that there are but few ships in Port; but supposing that there were many ships, then we believe on enquiry there is not sufficient produce to fill them. The cause of such a state of things should be examined, as India lives solely by the sale of her Agricultural produce. Also, the position taken up by the Zemindars in Behar, in forbidding the cultivation of indigo, merits the attention of Government. By Mr. Reynolds' Bill every ryot has a right of occupancy: and yet the whole of the Bill bristles with clauses of enhancement. We respectfully bring to your notice that it having been conceded that a ryot has a right of occupancy, this necessarily bars all enhancement, for it means fixed rates for ever: therefore the substantive points of the law are antagonistic to the procedure; and if all ryots have right of occupancy, then the clauses for enhancement should, we would urge, be struck out of the Bill.

Mr. Reynolds' Bill is wholly in favour of zemindars; in Act X. of 1859 there was some little protection in permitting the ryot to shew receipts for 20 years instead of from the time of the Permanent Settlement; this in the new proposed Bill is set aside, and the ryots are asked to shew receipts from 1839. Why 1839 more than any other year? This would make to the present time 42 years. This is supposing a most extraordinary state of affairs, when it has been shewn to the Government that before Act X. of 1859 the zemindars very rarely gave any receipts to the ryot; and if so, nothing was defined, —merely a receipt for rent, not stating either for what year nor for what land, nor the amount in beegas. If the ryot should have to shew receipts of rent, we submit that it should be for only three years, according to Regulation VIII., 1793.

And your humble petitioners will ever pray.

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DATED CALCUTTA,
15th *April*, 1881.

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TO HIS HONOR

SIR ASHLEY EDEN,

LIEUTENANT GOVERNOR OF BENGAL.

THE Humble Petition of the RYOTS and SUBJECTS of Bengal.

RESPECTFULLY SHEWETH,

THAT Your Petitioners were in possession of *their fields, and houses, their freehold proprietary right* from time immemorial, till the arrival of the English in India, and when the late Hon'ble E. I. Company took up the office of Dewan, they acknowledged these rights in their proclamations of the date 1769, 1776, &c., &c. These shew that their efforts were directed as follows: —"To secure to the ryots the *perpetual* and *undisputed* possession of their land, and to guard them against arbitrary exactions," pointing thus rather to a decrease of rates of Revenue,—the increase of Revenue being directed only to larger areas, by bringing the waste land into cultivation, and the support of the ryot. Again, 1786: "It is entirely our wish that the natives (ryots or subjects) may be encouraged to pursue the occupations of trade and agriculture by the secure enjoyment of the profits of their industry." Also, Sir John Shore says: "*and at present we must give every possible security to the ryots, as well as, or not merely to the Zemindar.*" This was the object of the Decennial and Permanent settlements,—not the support of the Zemindars. See the minute of the Marquis Cornwallis 3rd Feb. 1790: "It is immaterial to us who is the Zemindar, provided that he pays the Revenue, protects the ryots, and brings the waste lands into cultivation." This idea was followed up by Regulation 1, 1793, declaring that the permanent settlement was made for the "future ease and happiness of the people," and, again, by Regulation 17, 1793, that the Zemindar shall not distrain for Revenue "the lands and houses of the ryot, nor any other real property belonging to him," nor "the tools of any tradesman or labourer:" that the crop, only, was hypothecated for the Revenue—not the land. The zemindars can only seize the ryots' personal property: therefore the proprietary right of the Zemindar is confined to the personal property of the ryot, deducting his plough-bullocks, plough, and seed. Therefore the right in the soil conveyed by the Government to the zemindar is only of the nature of personal property,—in fact an income tax; and by Regulation 2, 1793 the land is vested in the zemindar, not given to them, *and the proprietary right confined to* $\frac{1}{10}$ *or* $\frac{1}{11}$ of the Government rates: hence the zemindar has no real property in the soil. Although money may have lost somewhat of its purchasing powers, yet the same amount is paid to Government; in this $\frac{10}{11}$, there is no loss to the Zemindar. Including the waste lands, which were not assessed 33 per cent + 5 per cent Nankar + 10 per cent profit, by Regulation 8, 1793, the Zemindar receives 48 per cent of the possible Revenue of 1793. What we complain of is that he is now receiving more than *four times that amount of which the Government and ryots are unjustly deprived.* The zemindar's character is manifold: he was a land-agent, policeman, tax gatherer, and a servant of Government: now he retains only the two last qualifications. In the opinion of Earl Moira, Governor-General of

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India, in 1823, Rent Commission in page 472 preambles of Regulation 19 and 44 of 1793 "that the ryots, payments were to be regarded, not as mere rent of land due to an absolute proprietor, but as an assessment payable to an intermediate manager, possessing a hereditary and transferable property in the incidence of their management." That by Regulation VIII. 1793, there are two penal clauses preventing the increase of rates and new Taxes, so that our proprietary right as well as our freedom was secured to us by the permanent settlement, (extract from the minute of 1790, Marquis Cornwallis—"unless we suppose the ryots to be the absolute slaves of the zemindars, and by regulations 8, 1793 and 7 of 1822, there is no enhancement of rates. Whereas Act X of 1859 is attempting, by wrong ideas and reasoning, to upset our above rights, and we respectfully protest against it, and the subsequent Amendments, and even to the new proposed *Rent Law, as it does not give us the relief that we prayed for.* All that we ask for is the restoration of our rights, under Regulations VIII, 1793, and VII of 1822, in which there is no enhancement of the rates of rent fixed by Government, for ever, in Regulation VIII, 1793, and for every 30 years by Regulation VII, 1822. We here give a recital of the various Proclamations and Regulations.

The Government, from 1765 to the present time, always arranges with the ryots, the proprietors of the soil, for the revenue or rent, before handing the Estate over to the zemindar, the tax gatherer for the collection of the Revenue, fixing rates called the stipulated amount of the potta, 14th May 1772, and the specified amount of 1791, in *Regulation* VIII, 1793, *section* 52 *(not to be specified afterwards) as the zemindar powers of settlement ceased on* 30*th March* 1792.

The zemindars objected to fixed rates for their collection, as there were no fixed rules for ever, for the collection on the ryots: hence the Marquis Cornwallis minute 1790, * "Whoever becomes a proprietor, after these pottas have been issued, will succeed to the tenure with the knowledge that these pottas are to be the rules by which the rents are to be collected from the ryots." Reg. VIII, 1793, Sec. 61, "but after the expiration of the year 1198 (1792), no engagements for rent, contrary to those ordered, are to be held valid"—As then, so now. See annexed the late decision No. 7, Registry 1845, 12th March, by Mr. Thomas Reed Davidson, Commissioner, respecting No. 4 chur alluvion, when the ryots, not the zemindars, petitioned Government against the increase of rates of rent from 5-5-4 to Rupees 20 per beega. The ryots were successful, and the old rent was decreed.

In 1772 there were penal clauses against taking any more than the stipulated amount of the potta, under any pretence whatever, or increasing the rates by any other abwab or tax: it was considered *extorted*, and "the penalty was of refunding to the ryot, and a similar amount to the Government. In a very notorious case the farmers lease was to be annulled."

This penalty is renewed with considerable force in the settlement law Reg. 8, 1793. This Regulation confirms the original rules of the Decennial Settlement. Regulation 8, 1793, has three penal clauses, nay four, for the protection of the ryot, First, in Section 52: if any farmer of revenue took more than the specified amount, he would have to refund twice the amount; again, by Section 55, if any new abwab or tax was imposed, the fine was three times the amount, for *the entire period of the imposition*; the third penal clause or fine is in the Potta delivered to the ryot. By Section 60 and 61 Regulation 8, 1793, if the abwab is not kept separate from

* Incorrectly quoted at page 450 of the Report of the Rent Commission.

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the assul, (or old original rent) he is to be non-suited: all claims not supported by pottas are to be non-suited. *Clearly shewing that each item, must correspond in non-enhancement with the two sections forbidding enhancement of rates of rent.* Much is relied on Regulation 5 of 1812, the Directors of the late Hon'ble E. I. Company state (Section page 416 of the Report Rent Commission the 9th May of 1821,) that if Regulation 5 of 1812 "injured the ryot's rights they were no part of the permanent settlement, were revocable, and ought not to have been maintained." Again, "1st August 1822, the *occupancy ryots* had, by the custom of the country, rights even against Government in respect of their rates, *(the rents of these occupancy ryots are now being enhanced by the later Acts of which we complain)* which could not be set aside without the imputation of injustice." This was confirmed by Sir Lawrence Peel's decision, page 139 of Fulton's Reports 1854; "the ryot had an hereditary interest, independent of both Talookdar, and Government." Again, "the ryot has here a better tenure than a lessee in England, and one not so precarious as a tenant at will;" continued in 1830 by the Hon'ble Court of Directors' letters dated 22nd December 1830, to be found in Circular Order No. 125, October 1831.

"But if leases are such as only to define and fix payment of one individual out of many, leaving to that individual the power of indefinite, that is of arbitrary, exaction over the many, such leases can be followed by nothing but general misery, and will never have our assent."

This clearly follows out the idea of the Marquis Cornwallis, that enhancement of rates made slaves of the people, but put in other words.

The Khoodkast or resident ryots were precluded from any enhancement of rent, by the Decennial Settlement of 1781, (this literally includes every ryot of the present day, as there are now no non-resident Ryots) confirmed by the Decennial Settlement 1791, and Permanent Settlement 8, 1793, Sections 52, 55, and 60, and the Pyikast ryots by the prescribed rules mentioned in Sections 52, 54, and 55, Regulation 8, 1793, originally of 1791. Both Khoodkast resident and Pyikast non-resident ryots were protected by a fixed Nirikbundee confirmed by Section 7 Regulation 4 of 1794, mentioned in the Bengal Revenue letter 1815, noticed by the Court of Directors 15th January 1817, see pages 415, and 416, of the Report of the Rent Commission: the whole mistake had arisen, they said, "from treating the ryots payments as rent, not revenue." The native Princes and English Government of that day never raised the original or assul rent, but in enhancing, simply increased it by adding or doubling the abwabs or taxes: this was therefore the only channel of enhancement, (see the minute of Sir John Shore 1790, 3rd February,) and when this channel was closed by Section 55, Regulation 8, 1793, it prevented the enhancement of rates upon all classes of Ryots, resident and non-resident, followed up by* Regulation 4, 1794, Section 7 "which entitled the ryots to renewal at the original rates."

See 27 (C. repudiate enhancement and settlement

See page 452 Report Rent Commission. Memo. of the Hon'ble J. O'Kinealy:—

"In the first place we know as I have already pointed out, that the renters of 1786 were prohibited by the terms of their leases from enhancement: these conditions were renewed in the zemindars kabulyots at the time of Decennial Settlement of 1791, and they were not touched by the Permanent Settlement

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* passed to remove all doubts

of 1793." The Government first settled with the ryots the rates of payments through their agents the zemindars whose power for this purpose ceased on the 30th March 1792, and then made the zemindars, permanent tax gatherers, and at the same time *confirming the settlement made with ryots in* 1791, *for ever by Regulation* 8, 1793 and 44 of 1793, also fixing "the estimated provision for the Landholders and their families at 10 per cent of the collections" by Section 77 of Regulation 8, 1793, when subsistence, not luxury only, of the zemindars is guaranteed, for if the amount 10 per cent is not sufficient he is to "appeal to the Governor General in Council for more," *and not directed to take any more money from the ryots.*

In 1819 the Court of Directors state (see Report Rent Commission Page 474) the "Pergunna rates form a standard of payment not to be exceeded," (the Pergunna rates are therefore unalterable.)

There is no such thing as a tenant at will. This is strongly forbidden by the Marquis Cornwallis in these words: "to permit him to dispossess one cultivator, for the sole purpose of giving the land to another, would be vesting him with a power to commit a wanton act of oppression, from *which he could derive no benefit.*" Tenants at will receive no pottas (or leases). Some zemindars state *that they have none but tenants at will: if so, and if all these ryots choose to withhold their rents, zemindars might sue, but can get no decree. By Section* 61 *Regulation* 8, *of* 1793, *they would be non-suited in every case, and as all settlement at that time was for* 10 *years, it is obvious that there could be no tenant at will.*

By the minute of the Marquis Cornwallis 1790, "The question that has been so much agitated in this country, whether the zemindar and talookdar are the actual proprietors of the soil, or only officers of Government, has always appeared to me very uninteresting to them, whilst their claim to a fixed percentage upon the rents of their lands, has always been admitted, and the right of Government to fix the amount of those rents at its own discretion, has never been denied or disputed;" "every beega of lands possessed by them must have been cultivated under an *express or implied agreement* that a certain sum should be paid for every beega of produce, and no more.*" "Every abwab or tax imposed by the zemindars over and above that sum is not only a breach of that agreement but a direct violation of the established laws of the country. The cultivator, therefore, has in such case an undoubted right to apply to the Government for the protection of his property, and the Government is at all times bound to give him redress," *and it is this redress, that we Ryots and Subjects now humbly ask the Government to give us.*

Page 275 Report Rent Commission 14th May 1772, Warren Hastings: "that the farmer or contractor with Government shall not receive larger rents from ryots than the stipulated amount of the Potta, on any pretence whatever; that no Mathoots or assessments under the name of Mangni, Bouree, Gunda Sood, or any other abwab or tax, shall be imposed on the ryots; and that these articles of abwab which are of late establishment shall be carefully scrutinised, and at the discretion of the committee abolished (clearly showing that reduction of rent was contemplated) if they are found *to be oppressive and pernicious.* On conviction, for a violation of the foregoing provision, the farmer, that is the new pro-

* No necessity for a potta or tax gatherers' bill for each ryot.

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prietor, was to be compelled to repay the ryot the sum *extorted*, and to Government a penalty of equal amount, and for a repetition of the offence, or in a notorious case, the farmers lease was to be annulled."

The Zemindars hold exactly on the principle that an owner of lands or houses who had given up all his rights of enhancement to his tenants, and their heirs, by fixed rates forever, and then sold his estate, the new proprietor would then have a right in the soil: but what is it ?—really that of a land agent or tax-gatherer. When the Government made over the right to the Zemindars, they conveyed only their rights, clearly only a proportion of the crop, followed up by a claim on the personal property, not on the real property, see Reg. 17 of 1793. *(By Reg. 2 of 1793 the Zemindar's right is confined to* $\frac{1}{10}$ *of the Government right, or about 3 per cent of the crop,*—not the right of the ryots, this they could not do without the consent of the ryots) and "the Government is at all times bound to afford them redress. I do not hesitate therefore to give my opinion that the Zemindar neither now or ever has the right to impose abwabs or taxes on the Ryots" "Whoever, cultivates the lands the Zemindars can receive no more than the *established* rent."

There is no deviation of the policy of Government. The late Hon'ble E. I. Company, from their first acquirement of the country in 1765, confirmed by Reg. 1 to 48, 1793, and in the later settlement law of Reg. 7 of 1822 by the Court of Directors' letter 22nd December 1830, in the minute of Governor General 1832, page 42 by the Circular Order No. 190, 12th November 1833.

"In making a settlement which would limit the demand, I would assume as the basis of the proceeding, that the hereditary village community are to be treated as proprietors, as regards the enjoyment of the profits arising out of the limitation of the Government demand." Regulation XI of 1825 and the late Act 31 of 1858, confirm the ryots' rights in Chur or alluvial land, as concurrent with the right of the Zemindar when newly settled, both before and after the passing of this Act. *This brings us down to the very year before* 1859, *when Act X, to which we object, was passed.*

In the great Rent case after and consequent on the passing of Act X of 1859, Mr. Justice Campbell afterwards Lieutenant Governor of Bengal, Sir George Campbell, M. P., writes in his judgement: "When the customary rates were enhanced it must have been done without the least assistance from the Law or Courts of Judicature." This great rent case is now set aside as useless. So that the rulings of the Court have not been always so much in favor of the Zemindar as the Government wish it to be believed, and therefore that Government are powerless to undo their own wrong doing.

By the Permanent Settlement every one is protected from enhancement according to his class, zemindar, Talookdar, Istemeraredar, Moccurreedar (these two class of ryots have given salami to pay less than than the pergunna rates,) then koodkast, last pyekast ryots: nothing *left unfinished at that day*. We ryots humbly show that it is injustice to ask more from the khoodkast ryot than the rates of 1781, and from pyekast ryots the rates of 1791. Much more can be adduced. See the most exhaustive Report of the Rent Commission, the minutes of the Hon'ble J. O'Kinealy page 439 to 474, and the Hon'ble

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* Is this just of the legislature, because the zemindars cannot or refuse to shew the rate of 1793, or it is impossible, then the ryots were forced by the new law, to do so, to maintain their rights ; in suing, the onus probandi is always on the Plaintiff.

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A. Mackenzie 409 to 418, 169 to 114 also page 115 minute by M. Sconce. This Rent Law should not be universal, should not be introduced into the Tea Districts such as Darjeeling, where the land was literally sold by Government, and is of course free-hold. A zemindar cannot plough the land of his zemindary: he must let it, whereas Tea Planters have taken their land in Assam, Cachar, and Darjeeling, expressly that they should cultivate it themselves. Every district should have a law suitable for its settlement land law, like to Regulation 7 of 1822, "so that all decisions in the demands of the zemindar shall be hereafter regulated by the rates of rent and modes of payment avowed and ascertained at the settlement." It is clear from this that the three clauses for enhancement by Act X of 1859 are here excluded, a point to which we draw your Honor's attention, and strictly according to the Minute of the Marquis of Cornwallis "the right of the Government to fix the rates of rent at its own discretion."

We are surprised to find a very large memo on the subject of merger. The Hon'ble Mr. Field, in his digest, states that the zemindar can never plough the fields of his own zemindary; he is obliged to let it, by the custom of the country. He is obliged to let it, by Section 52, Regulation 8 of 1793; even of waste land, none is reserved. *The public land, that is the land of the ryot, can never merge into the private lands of the zemindar;* if so, then not a single ryot's tenure would be safe, and it is exactly what the zemindars are fighting for. Even the blood relations of the zemindar can never become possessed of ryotty land. The lands are divided thus: the Zemindar was formerly a ryot, and therefore his own (neej jote) lands and the Nankar subsistence lands are conserved to him, to do with them as he liked—both not to exceed 5 per cent of the land. Therefore the remaining 95 per cent is the property of the public, called the public or ryotty land, and as the zemindar in his capacity of ryot can treat his land as he likes, so the other ryots have the same privilege of treating their land as they like. The Government should enquire how the zemindars have become possessed of zerraut lands, the same as the indigo planter, for the nankar land and the 10 per cent allowed by Government, Section 77 of Regulation 8, 1793, are expressly set aside for their subsistence. There is no clause in either of the settlements enjoining the zemindars to resume the lands, on any pretence whatever. Why the question should have cropped up now, is most extraordinary, considering that the Marquis Cornwallis stated that ⅓ of the lands were uncultivated. Why were these not attached at once to the above neej jote or nankar lands for the subsistence of the zemindar? They are called the waste lands, and he is directed to let them *by Section* 52 *Regulation* 8, 1793, *in whatever manner he may think proper, but under the following prescribed rules, which leave him no discretionary power whatever.*

The question that we ryots wish to be raised, is whether the Permanent Settlement is to be maintained or not. Our answer is, that we believe it is the wish of the Houses of Parliament that it shall be maintained, for by direction, all the correspondence of that time by the authors of it, the Minutes of the Marquis of Cornwallis, Sir John Shore, and other Members of Council, were directed to be published in 1812, called the Fifth Report of the Select Committee, and deposited in the College Library of Fort William, and afterwards

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At the examination of the Parliamentary Committee on Indian affairs in 1831-32, the late Baboo Ram Mohun Roy, zemindar of considerable estates, particularly impressed upon those present the absolute necessity of preventing any further increase of rates of revenue upon the ryot under any pretence whatever.

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transferred to the Calcutta Public Library by Government in 1836,—a sacred deposit of the rights of the people,—we believe not merely for the Zemindars, but for us ryots. *The Zemindars base their rights on and only on the Permanent Settlement, and so do we ryots, and before the Permanent Settlement. Are we not to be heard.* The present readings of the law are to the effect that the ryots have no rights at all. We beg, therefore, that His Honor will not hurriedly make any legislation, for there are decisions of the Supreme Court, 1851, stating that the ryots' rights are concurrent, though subordinate, to the zemindar: clearly shewing that the ryots do not derive the title to their lands from the zemindar, and the ryots are not subject to them; and to make them do so, now, is the destruction of their rights. There is no direction on this point in the new law, when the Zemindar will not give leases according to law.

Here is a case in point: a ryot's name was entered in the Jummabundee of Government respecting a certain area of land under Regulation 7 of 1822 in the year 1847. The land was divided, years before, by the Supreme Court in a law suit in 1829 between the relatives. About 1856 a law suit was instituted by one relative, to obtain possession of the whole of the land, which had been given to another relative. The Supreme Court's order was upheld, the Zemindars were made parties to the suit, and false receipts for rent for 27 years were produced in Court.

(Query, were not the Zemindars implicated.)

The zemindars have never asked for any rent for these lands: *the ryot has been in possession from* 1780. *Is he to be called a tresspasser, and turned out,* when he was put in possession of this land *by the Supreme Court in* 1829, more especially when another decree of the High Court has decided, in 1851, that the same ryot's claim (adjacent) is concurrent though subordinate to the zemindars, (this does not mean subject). In our humble opinion, a ryot once in possession of any portion of public lands, called ryotty land, *can never become a tresspasser: how can he be a tresspasser on his own property?* Here is the practice of three Courts—one the Supreme Court of Calcutta, at that time not amenable to the Government of India, and the other two, the Sudder Dewany Adaulut or High Court, and the Court of Wards amenable to the Government of that date, (the late Hon'ble E.I. Company)—all treating the zemindars, by their procedure, as Tax gatherers in their actions, and even long after passing of Act X of 1859 and decrees given. This is contrary to the now expressed opinion of the Bengal Government, and therefore we beg that legislation may not be against the ryots on this point.

In all countries, even before the time of the Romans, there have been slaves, and in this country there have been Golams, Pykes, (Indian name for slaves), but the rest of the ryots were free. The Government has always accorded to the natives of this country religious liberty: we respectfully beg to show that religious liberty is incompatible unless joined to civil liberty, and to make clauses for the enhancement of rates of revenue, is the destruction of both our civil and religious liberty, which has always gone together in all countries.

We can only show this free-born right forcibly by your own shasters: when Paul was brought before the Roman Prætor for violating the religious law of the Jews, and about to be scourged, we quote the conversation between the Centurion, Chief Captain, and St. Paul, as follows: Centurion to Chief

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Captain: "Take heed what thou doest for this man is a Roman." Chief Captain: "Tell me, art thou a Roman?" Paul "Yea." Chief Captain "with a great sum *of money obtained I this freedom.*" Paul: "*But I was freeborn.*" *This question of right is in the man, not in the land, and upsets the whole principle by* which Act X of 1859 and its amendments have been framed, for by the Marquis Cornwallis the people are not absolute slaves to the Zemindars, and to decree enhancement of Rent, is to make them slaves. "Who ever cultivates the land, the Zemindar can get no more than the established rent."

This with the penal clauses of Reg 8, 1793 shews that the right of non enhancement is in the man, his freeborn right, not in the land. An Englishman claims his rights wherever he goes.

We will now turn our attention to the new proposed Rent Law.

1st.—It is against our Settlement Laws.

2nd.—It is called a law to amend the law between landlord and tenant: this is erroneous, for zemindar does not mean landlord, but land agent, and ryot does not mean tenant, but petty proprietor of the land. It would mislead future generations the same as Regulation 5 of 1812, and Act X of 1859 and its amendments.

3rd.—It is a double law, one portion for the recovery of (debt) taxes on land and other taxes, (consolidated)—the other portion to which we strongly object is, to discover fresh data for the future settlement of land already declared to be settled at fixed rental, therefore unjust, and for future law suits about rates, not amicable settlements, as it ought to be, whereas by the Marquis Cornwallis this is solely the privilege of Government, not that of the zemindars nor of any Court of Justice, see the Marquis Cornwallis minute 1790, "the right of Government to fix the amount of these rates at its own discretion which has never been denied or disputed:" in fact the Custom's rate called Customary rates. It talks of the prevailing rate, a fair and equitable rate; this clashes with the above, is not in the Permanent Settlement, *and is a bone of contention* which should be eliminated from the Revenue question, which is that strictly before the Government of India, and *can never be satisfactorily settled by this clause. The Courts of Justice have only to determine what shall be the rate according to the Government tariff, and had no right to make a new tariff.*

4th.—Nothing defined, all to be settled by law Courts, also confuses the tenure of land, with the free born right of the people. The great protection to the ryot is supposed to be a law suit, but we beg respectfully to point out *that the law has not been able to prevent the ryots from spoliation to the amount of* 165 *millions Sterling, pointed out by the Rent Commission page* 464. The course that we very humbly beg to point out would be to issue a Commission to measure the land, and fix the payment of each individual, according to the Court of Director's letter of 22nd December 1830, and by Regulation 7 of 1822.

5th. By improper rulings of so-called custom, lately established in violation of the law, by the Judges, whose error has clearly been pointed out by the Court of Directors as early as 1815-1816, See page 416 Report Rent Commission, the Judges have decreed enhancement of rent, contrary to the Minute of the Marquis Cornwallis, who proclaimed "*it a direct violation of the established laws of the country,*" and also against Reg. 1 to 48 of 1793, on which the Ze-

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mindars base their rights, for up to that time they had no right in the soil whatever, till Reg. 1 of 1793 was passed : they had no hereditary right like the ryots ; they were all dismissed by Meer Jaffer Khan, and by Warren Hastings, see his despatch of 1772.

6th. It is against the right of the ryot of the present day. If this free-born right of non-enchancement of rates belonged to the man, it belonged to his children : therefore this will embrace the whole of the village. It is nowhere stated that the ryot had only a life interest in the lands that he ploughs : the rights are in the man ; whereas it is attempted to be only on certain land, which is not defined, but it is in the man: according to the Marquis Cornwallis " Whoever cultivates the land, (this refers even to waste land) the Zemindar can receive no more than the established rent, followed up by Reg. 17 of 1793, which 'declares land and houses to be the real property of the ryot.' The Pergunna rates are not lost : they are in the archives of Government, and unalterable.

7th. We object to the huge nature of the bill, its many clauses involving so many law suits, instead of amicable settlements. Whereas, the old form is more suitable to the small amounts that the ryots pay, who can seldom afford law expenses. By the older Regulations the crop, was hypothecated for the rent, before the crop was cut the rent was obliged to be paid, or good security given, this was so simple that it avoided all necessity of a distraint law, and afterward possible eviction of tenant, the aim also of the present legislation.

Regulation 8, 1793, Section 64, is the fifth penalty protecting the ryot :— zemindars " are to adjust the instalments of the rents receivable by them from their under-renters and ryots according to the time ofreaping and selling the produce, and they shall be liable to be sued for damages for not conforming to this rule."

We have a great grievance to report upon this section, as its terms are not carried out. The zemindars are now making kists for rent payable in advance month by month, so that if the ryot has not the money by him, he must borrow at the mahajun's rate of interest from one anna to four annas per month per rupee. If the ryot falls in arrears to the zemindar, then the zemindar levies this latter rate of 4 annas per month for every rupee of so miscalled arrears. If only one anna per rupee per month was levied on the 16 annas rental, such as rice, then for every 12 rupees the ryot would have to pay 16 rupees 13 annas, and at the latter rate of 4 annas per month, Rs. 31·4. Indian corn is considered a 10 anna crop ,and wheat and barley a six anna, rice 16 anna, munjeet a three year crop. Section 63, Regulation 8, 1793, second clause zemindars, or their agents are forbidden to demand the rents of the absconded ryots from those that remain, this clause is evaded, by many zemindars calling every bit of waste land purty that is grazing land, and charging his proportion to each ryot, this requires some remedy. The Government have agreed in Act X of 1859, that the rates of 1793 are not to be exceeded, and profess with the zemindars that they are not discoverable : therefore we put forward the following rule. The Marquis Cornwallis states that the ryots were assessed to the full rate, and that ⅓ of the land was waste. By Section 63. Regulation 8, 1793, no rent can be levied on uncultivated lands. Then ⅓ of the land must have been excluded in making the settlement with the zemindar : therefore, having

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the area of the village and the Government rent, the Pergunna nerick is easily found, thus—

Village area 2,400 beegas, deduct ⅓ uncultivated lands leaves 1,600 beegas for the Government rent, which being 700 + 10 per cent, allowance to zemindar, makes the total number of rupees 770 for 1,600 beegas,—a little less than 8 annas per beega, as the average pergunna rate : this according as the lands are divided into 1st, 2nd, 3rd quality. The first quality will be over 8 annas per beega, and the third quality less than 8 annas, solely determined by the number of beegas of each quality, which will vary in each village. If the question of amount of rates should come before any Court, the Collector should furnish the above averages of the village, which should not be exceeded.

Suits are also brought for arrears of rent at enhanced rates, these arrears and interest should not be allowed.

8th. We object to the meaning of the expression enhanced rent, as this by the older regulations does not mean enhanced rates, but simply an increase from the area of land ploughed being larger, or the products grown being changed: " the equalising and correcting the assessment" mentioned in Reg. 8 of 1793 does not refer to the settlement with the ryots, but the various villages in the charge of the zemindar, and to this day the unequal assessments are notorious. Furthermore the prevailing rate is a fixed rate, therefore the wording of this clause under enhancement is unsuitable. By Sec. 56 Reg. 1793, and Reg. 7 of 1822 confirmed by circular Or. 190, 12th November 1833, all the profits of the land are assigned to the ryots, so that there is nothing left which can be called the unearned increment remaining now to be settled as supposed by Sir Richard Temple and others. Only peddling little crops, as vegetables or fish are sold in open market, and these profits are the rights of the vender, not of the Zemindar, as the ryot after he has grown his crops then becomes a trader. On the 12th April 1787, the Court of Directors wrote (Page 1 Zemindary Settlement of Bengal): " It is entirely our wish that the natives (ryots or subjects) may be encouraged to pursue *the occupation of trade and agriculture by the secure enjoyment of the profits of their industry.*" Also the canongoes, (the village attorney) and the patwarrees, (the village accountant) should both be restored, the former to instruct the ryots in the laws which they cannot read, and the latter to keep the accounts of the village, not so much between Zemindar and Ryot, but between ryot and ryot, that one should not plough another's lands, for the ryots do not derive their rights from the Zemindars.

It is clearly laid down that the principle of all Legislature is, *that no one shall profit by his own wrong doing, whether by force or fraud. It is clearly* proved that the Zemindars have acted many times as above, and have laid themselves open to criminal prosecution for obtaining money under false pretences : therefore it was not correct that the Rent Commissioners *should attempt to make wrong, right,* by the including in the New Law the three clauses for the enhancement of rates of Rent, laid down in Act X of 1859, which have been proved by themselve, an invasion of the rights of the ryots.

That the prevailing rate is afixed rate, is like one of the axioms of Euclid—incontrovertible : therefore we need not show it ; but neither the prevailing rate

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nor a fair and equitable rate, are in the settlement law,—only the rate authorised by the Government of 1793, and by Reg. 7 of 1822 is the proper rate.

Minute of Mr. Sconce 9th May 1858, page 115, Report Rent Commission. ' The amount of rent on each case chargeable should be determined, rather, by the uniformity of previous payments, than enforcing comformity with the rent chargeable on neighbouring land. Each man's liability should be regulated by the reference to his own rights, not with reference to rights which it is not his business to maintain." If levied at an uniform rate for three years it could not be revised even in 1791, and, by the Permanent Settlement, never afterwards. The payment of an uniform rent for more than three years established a prescriptive right to the continuance of that payment in future years, Sec. 60 Reg. 8, 1793. Whereas by the Act X of 1859 the ryot has to shew it for 87 years:—even for 20 years is too much. That the two other clauses for enhancement of rates are also equally inadmissible, as they must occur without the agency of the Ryot; in the first place, the ryot, after having grown his crops, becomes a trader, and then is protected by the Court of Directors; 12th April 1786, by Sec. 56 Reg. 8 of 1793, Reg. 7 1822, and Circular No. 190, 1833. All excess of profit, this, over other years, is simply due to his keenness in selling his produce, except in times of famine, which of course are excepted, for then, there being no crop, there is no rent payable. *And if by these clauses the rent could be raised, then by the 1st clause it must be reduced to the prevailing rate, so that these two clauses are inoperative, and ryots should not thus be subjected wilfully to improper lawsuits.* There is some addition to the old law, but this does not alter the substance.

Also the increase in the productive powers of the lands is solely the work of the ryot, who ploughs, sows, weeds, manures, irrigates and, makes embankments again inundation: so all the profit accrues from the agency of the ryot—a truism, which needs no further comment. Embankments protect, but do not increase the productive powers of the law. Even inundation, can only restore the land to the original value of the date of settlement: if not, then the lands of Egypt, being inundated over 3000 years, if they yield per beega, each year of inundation, but one maund excess, it would be so large a crop that 300 beegas could not contain the supposed yield of one. *The procedure is thoroughly inconsistent with the substance of the law.*

10th. That Bastu lands are always free; that by building on land the ryot makes it more valuable: therefore, according to Act X of 1859, there should be no excess of rent: it is made valuable by the agency of the ryot.

11th. Because silver has lost somewhat of its value in relation to Europe, or that it has lost its purchasing power, these are no reasons why the Zemindar should get more, clearly pointed out by the Marquis Cornwallis in his minute 1790. Moreover the Zemindar has to make over 1? to Government, so that really this question affects him in no degree, for he does not transmit the money to England. Moreover, as a provision against loss, he has assigned to him Nanker (5 per cent) land, *rent free*, so he has no chance of starving, like the poor ryots, who are solely dependent on their own exertions for support.

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12th. That the Zemindars receiving a percentage from the collections of the lands, shews that they are not proprietors in the English sense. This will materially alter the procedure; therefore, with respect to the proposed new Rent bill, we can give no proper expression of assent, or dissent, till our rights as above have been definitely settled.

13 We respectfully bring to his Honor's notice that we differ with Sir Richard Garth respecting the transferable nature of a ryot's tenure, for they were transferable privately, and also by the High Court of Calcutta long before Act X of 1859, and without any reference to the Zemindars. By Reg. 17 of 1793 the lands and houses are recognised, as the 'real propertyof the ryot'—therefore transferable at his pleasure. Numerous Estates have been sold all round Calcutta, as far back as 1798, 1812, by the Supreme Court. Indigo Planters are only cultivators of the soil, and Indigo factories,including direct and indirect contracts, have all been sold without reference to the Zemindars—Sugar Factories, in fact every description of manufactory: only the Zemindars have been advised of the change of ownership—that is all. Even so late as 1856, by the High Court, lands were sold at Auction, even at this day, by Messrs. Mackenzie Lyall & Co. every week, without reference to the Zemindar: this strengthens the Proprietory Right of the Ryot, and we therefore cannot give it up. There is a very erroneous idea of the position of the Zemindar. By Reg. 2 of 1793 the land is vested in the Zemindar. Money vested in the funds does not belong to the funds, but to the person so vesting: at any time he can recall his money; so can therefore the Government take at anytime these Zemindaries out of the charge of the Zemindars. The true position of the Zemindar is, that he was a land agent, a tax gatherer, a policeman, and a servant of Government. His position of land agent ceased on the 3rd March 1792, and that of policeman at some later date.

If the Collector has to settle the rates, so far good, but then the three clauses of enhancement are of no use, and it must be at his own discretion, according to the principle of 1790, and the rates of 1781 and 1791.

What are we say to the Government to make them understand our position, when even the Judges of the land do not understand our rights, nor the laws of the land, as pointed out by the Court of Directors, see page 416 *Report Rent Commission Sec.* 27. *We are sorry to say that this grievance is identical with that now in France, where there is a petition to the Legislative Assembly praying for the dismissal of many of the Judges, for giving decisions contrary to law.* Sir Richard Garth in his minute page 380 is in direct opposition to the Court of Directors respecting the nature of the payment of the Ryot, confusing their payments as rent,not revenue, and consequently his minute loses all its force. However detrimental it may be to break up holdings, and divide them amongst the descendants of the Ryots, &c., still this is the universal custom of the country, both of Hindoos and Mahomedans, and this principle does not belong to the Rent Law, but to a succession law—even women sharing with men under the Muhamadan law. There are many expressions in Sir Richard Garth's minute to which we can refer with pleasure, but to that portion regarding the enhancement of rates we decidedly differ. *This is our very great grievance, that the Judges of the country have many of them given wrong decisions, so that this' confusion tending to the extinction of the ryots rights*

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pointed out, then, by the Court of Directors in 1815, *is as apparent now as ever: there fore we beg that one of us ryots may be elected to the Legislative Council for the protection of us ryots.*

Again with respect to the digging of wells, this is the right of the ryot. Neither in India, nor in England, can a man or his cattle live without water, —not only water, but pure water. Tanks are always dug for the whole of the community, or otherwise, far away from rivers, the ryots could not exist. As the tanks become old they become impure, gradually, and therefore many ryots dig private wells, and allow only the people of their own household to draw the water from thence, at the request of a neighbouring ryot or stranger who asks for water; large quantities of water are daily necessary, and the little holes spoken at page 396 are totally inadequate. Ryots do not hire land from zemindars. Regulation 2, 1793 specially points out the right of the cultivator to make provision for the storage of water, and the forbidding the making of tanks and wells is strictly opposed to and in the face of all sanitary regulation,—nay even the laws of life. Men must have water not only for drinking and ablution, but for irrigation: else why do the Government construct canals, &c. Many a cold weather crop requires irrigation,—opium, onions, sugarcane, and, in the North-West, the whole of the cold weather crops, indigo, &c. It is as absolutely necessary to drink, as it is to eat, and it would be extraordinary to say that the land is only let for eating purposes, and not for drinking. It is this absence of the knowledge of the laws of life, as well as of the laws of the country, in which we are sorry to say that the Judges are deficient.

Why, even a Koomar or Potter requires water for his manufacture: and is this to be refused to him at the will of the Zemindar? We must particularly beg to bring to your notice that the Ryots do not derive the title to their lands from the Zemindars: this is the great mistake of the Judges. Wells are not ornamental pieces of Water, but the requisites of life.

We cannot allow the note of Mr. Field or the law relating to land used for buildings to pass unnoticed, mentioned in page 395 of the Rent Commission. If a man makes bricks for his own house, this is right, as he is permitted to erect a dwelling of mud: it is perfectly indifferent if he burns it, before putting into the walls of his house; but if a man makes bricks for sale it is quite another thing. Even here are two points of view, as bricks are often made out of river mud, which is replaced each year by the river. To prevent a ryot from improving the land by building, is even against the principles of Act X of 1859, which conserves all this profit to the ryot. With respect to planting trees, it is as much a crop as wheat, or rice: for constructing their houses, the ryots must have bamboos and thatch. Trees were almost always in the land, from time immemorial, and their necessity as an appurtenance of life should be respected and replaced. It is enjoined by the shasters as part of our religion to plant trees, particularly in the Ruth festival, when Melas and fairs are expressly held for the sale of young trees every year. To prevent the planting of trees is against Sec. 56, Reg. 8, 1793. The Government have their forest law. and if the ryots have no trees, how can they make their carts, ploughs, doors, fuel, charcoal for forging iron into nails, hoes, and ploughshares. They have no coal. To forbid them to do so, is against the custom of the country; forbidding

the change of crop is not the province of the Zemindar his : right is only to the Established Rent (see the minute of the Marquis Cornwallis.)

Indigo Planters are cultivators like ourselves, and therefore should join in this petition. There is not a word in the settlement laws which enjoins the Zemindar to take more from Englishmen, Frenchmen, Germans, Chinese, Siamese, or any other foreigner, more than he would be able to get from a ryot: in fact every one is protected by the Court of Directors' letter 12th April 1786: "(ryots or subjects) each shall enjoy the profits of their industry," and this is not altered in any of the subsequent settlements, decennial and permanent. Also, the land being once settled with the Indigo planter, or foreigner, or ryot, [*by Regulation* 8, 1793, *Section* 61, *but after the expiration of the year* 1198 *(30th March* 1792*) no engagements for rent contrary to those ordered are to be held valid,*] there is no section in the Settlements Law authorising the resumption *or eviction* of those lands by the Zemindar. "Ryots and subjects" were to be equally protected : "to permit him to dispossess one cultivator for the sole purpose of giving the land to another would be vesting him with a power to commit a wanton act of oppression from which he could derive no benefit." 1790, Minute of the Marquis Cornwallis.

We, her most gracious Majesty's most humble servants the Ryots of Bengal, respectfully submit to Your Honor, that the rent Commission at page 464 finds, that either wilfully or by erroneous interpretation of the laws, we ryots, have been defrauded at the lowest computation of 165 millions sterling, by the Zemindars, and in accordance with the arrangements made by the Zemindars, with the Government, in the original rules of the decennial settlement, subsequently confirmed in the permanent settlement, the Zemindars should refund this amount to the ryots, and as it is impossible to restore his share to each individual, that the Government receive, take charge of, and invest it in the public funds for the benefit of the nation " For a repetition of the offence or in a notorious case the farmer's lease was to be annulled ;" consequently every Zemindars lease is liable to be annulled We humbly submit that unless one of the Zemindars is deprived of his Zemindary, the Zemindars will not believe in this law, and their oppression will continue : therefore we beg that Government will of its goodness, and sense of justice, carry out the majesty of the law with respect to one only of the Zemindars, who has behaved badly in this respect, oppressing the ryots against the tenor of his Kabulyot. The Collector should visit every *Zemindary* in his charge, and if the Zemindar is oppressing the ryots, *then he should be removed.*

We refrain from any expression respecting the procedure of the now proposed rent law, for if our proprietary right is acknowledged, then the whole procedure will have to be changed; and the Rent Commission have not been able to define a ryot, although a definition is in the law, yet the ryot was called by Sir John Peter Grant, late Lieutenant Governor of Bengal, a "*peasant proprietor of land.*" It is a very serious matter that the Zemindars have invaded the prerogative of Her Majesty Queen Victoria, Empress of India, in levying more than the rates authorised by Government, to the serious detriment of Her Majesty's Revenue, as well as of the welfare of the country. *The right of enhancement of rates was jealously reserved by the Marquis Cornwallis.*

We beg particularly to bring to His Honor's notice the following Extract from the *Englishman* of the 22nd March 1881.—

THE RENT LAW MEETING AT HOWRAH.

TO THE EDITOR OF THE ENGLISHMAN.

SIR,—I perceive that your reporter of the Rent Law Question meeting has not taken notice of one of the most important points in connexion with the Bill now being brought forward by the Hon'ble Mr. Reynolds both in the Bill and memorandum circulated. I refer to the limitation of enhancement, Sec 10.

(1.) The enhanced rent may not be more than double the previous rent.

(3.) Rent once enhanced may not be again enhanced for ten years.

The doubling of the rent every ten years is thought by several of the Government officials a very equitable limit, but I do not think that any one of them has worked it out. The English Government have been in this country over a century and are likely to be here for another century. Therefore a beega of land paying one rupee per beega, if assessed as above, at the end of the next century, the rent would be 1,026 rupees- therefore a maund of Paddy would cost over 200 rupees, and the maund of rice would cost over 250 rupees. We ryots decidedly object to this clause in the Bill.

JOHN STALKARTT.

March 21, 1881.

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The whole of page 464 Report of Rent Commission we press urgently on your Honor's notice.

Regulation 41, 1793 Section 19. "One part of a regulation is to be construed by another, so that the whole may stand."

We humbly suggest that all further taxation should be for the benefit of the public, not for the Zemindars. The money that the Zemindars receive will not be spent in the improving the public property, either by Railway, Canals, Tanks, Wells, &c.: therefore *the public money* should not be wasted on them.

Furthermore, it is impolitic to have any one to stand between the Government and the people.

Attached are copies of decree in the suit of ryot and Government for reduction of enhanced rent of the land on which the E. I. Railway terminus stands: sold by Mr. Mackay for 5 lacs of rupees. Where then was the proprietary right of the zemindar? Also a copy of a jummabundee for chur land settled by Regulation 7 of 1822, on the principle of the above decree, shewing how the ryots have been oppressed and harrassed and the helplessness of Act X of 1859 to protect them.

We humbly beg that your Honor will be so gracious as to receive this the petition of us humble ryots and subjects, and grant the relief that we pray for, *that is, the restoration of our rights under our settlement laws, Regulation 8 of* 1793 *and 7 of* 1822, *in which there is no enhancement of rates of rent, and no evictions*— in other words fixity of rates, fixity of tenure, freedom to sell or mortgage, *we ask nothing new, and so do injustice to no one.*

For the use of Government, we furnish four copies of this Memorial.

One for His Honor the Lieutenant Governor of Bengal.

One for His Excellency Lord Ripon, Governor General of India.

One for Lord Hartington, Secretary of State for India.

One for Her Most Gracious Majesty Victoria Queen of Great Britain, Scotland, Ireland and Wales and Empress of India,

According to request of Government numerous other copies for the various members of the Legislative Council.

And remain your Honor's most humble and obedient servants and ryots of Bengal.

Appendix A.

ROUGH TRANSLALION.

No. 7 Registry 1845.

Roobacary from Revenue Commissioner's Cutcherry for 18 Zillas with Jessore, and held at Allipoore, by Mr. Thomas Reed Davidson, Commissioner, 1845, 12th March, Bengally 1251, 30th Falgoon.

Zillah 24-Pergunnahs.

Khus No. 4 alluvion Boro Pyecan Purgunnah, fixing rent, &c., settlement of new Chur Land in Howrah.

Ten annas zemindar, late Hurish Chunder Roy's sons; minor children Jogindro Chunder Roy and Poornoo Chunder Roy. Six annas Zemindar Raja Radacaunt Deb.

This day having had before me and examined the papers that in the year 1839, the Deputy Collector, Baboo Woomacaunt Sen Bahadoor, having measured 261-16-9 beegahs of alluvion or chur land, fixed the rents with the ryots at Rs. 5-5-4 per beega, and from which being deducted the establishment and proprietor's charges, he had settled with the proprietors of the land named in the margin.

This settlement was made from 1240 Bengally year, and all these papers of the settlement were sent to the Sudder Board for approval. Afterwards on 21st July in the year by the English letter No. 13, the Sudder Board, after considering the reduced settlement by Woomacant Sen Bahadoor and having sanctioned the said settlement to be then made for three years, and ordered settlement to be then made afterwards in the year 1250, a general settlement was made at the former fixed rate. After which Baboo Radanauth Gungopadia, Deputy Collector, in the year 1844 remeasured the land, which was proved by him to be as per margin and the Collector on examining and correcting the settlement as fixed by the Deputy Collector, Gungopadia Bahadoor, fixed the rent with the ryots at Rs. 20 per beegah and the paper to this Court for acceptance. The Acting Commissioner, on seeing the said paper, forwarded it, on 21st November, the Board having made a Roobacary for the Collector to ascertain and report if the proprietors of the land were agreed or not to this settlement the Collector, in his reply thereto of 4th February last sent together with the copy of the Roobacary, and the land proprietors' petitions and other papers, the Board's order of 13th February (No. 37 English letter,) containing some remarks as to the power and direction of this Court, and the order for settlement is arrived: On seeing all the papers of this matter, it appears that it

Total land in Beega of 80 cubits.	Land of residing.	Yards.	Garden.	Best Chur land.	Second Chur land.	Fit for cultivation.	Not fit for cultivation.
261-18-9	16-9-12	22-4-0	42-8-14	35-17-14	3-6-0	35-4½	7 17½

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was the first duty and proper course of the parties who had in charge to settle and make arrangement of the said alluvial land to ascertain *the rates established for the neighbouring land around* it, and to fix the rate accordingly for such alluvion. By the papers it appears that the rate of rent was first fixed in 1835, by order of the Acting Collector, Mr. Henry Palmer, after such an enquiry as to the rates paid on land in the neighbourhood; and that in 1839 Baboo Rada Nauth Gungopadia, Deputy Collector and Acting Collector, Mr Brown Beresford, have fixed the rate at Rs. 20 per beegah, because they only *consider the present condition and circumstances of the neighbouring lands* and their rate of rent, but without considering that docks, gardens and buildings have been made on the river bank, and increased gradually by the *outlay of the ryots, who have made it thus valuable;* and by considering only in this way they have fixed the rate exceedingly high; but it does not anywhere appear by these papers what were the lands respecting which they made investigation for ascertaining the customary rent paid by other ryots in the vicinity where they paid this rate. Besides, if any *Government officer should fix the rates of such* land merely *by observing the improvements made on them by the ryots's own expenditure, they might in that manner fix any unreasonable and excessive rent, and such* could not be considered as proper or fair, and could not be agreed to by Government. However, it appears that many people from ancient time, that is to say, before the chur land was formed, took pottahs on the west bank of the river from the owners of the land and they built and prepared docks, yards and different work places, buildings and gardens upon them; and subsequently the chur land formed opposite to them by which all their places of business being made further from the river, and thrown back from it. If Government should fix the rents of such alluvial land at excessively high rates, as now proposed by Gungopadia Bahadoor, Deputy Collector and the Acting Collector, then the ryots will suffer loss and be distressed in two ways, inasmuch as the new chur has formed in front of their original land on which they have built factories and such like; and, secondly, their rent *would be three or four times that of their original lands, againt which the new land has formed,* more especially as tney did not wish, nor have any occasion for such land. Only on account of their various ancient buildings becoming useless by the formation of the new land, it is become absolutely necessary fer them to take it. Upon this ground it will not be according to justice to fix *more rent on this new land than on the original land.* And by what proof Gungopadia Bahadoor, the Deputy Collector and Mr. Acting Collector, fixed the rates at Rs. 20 per beega, does not appear anywhere written in their papers, nor for what reason such rate can be said to be a proper one, seeing that if any arrangement was to be made, and the rates fixed, as they endeavoured, by guess, *why then was it not settled at twice Rs. 20 or 40 per beega even at any higher or more unreasonable rate?* But if Government wishes to get just and proper rent for the alluvial land, as it in no wise appears for what reason or on what grounds this Deputy Collector and Acting Collector could have fixed the rate at Rs. 20, it is certainly proved that they, without considering what are proper rules for settling rates of rent of alluvial lands in their mehal, and without taking *the rent facts into consideration* for making a proper arrangement about the rents, merely by seeing the Sudder Board's letter above-mentioned, in which nothing was particularly set forth in these matters, have

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thus very unfairly fixed the rent. Therefore, in my consideration, it is proper and most necessary to cancel their present arrangement, and proceed on the former one, the rate of rent therein being, as I consider, the just and proper one; and both the Deputy Collector and Acting Collector at the conclusion of their Settlement Roobacary having set aside the mourasee pottahs of Mr. Homfray, a ryot of 16 beegahs of land, at the annual rent of Rs. 73-12, and of Mr. Storm of 4 beegahs 8 cottas at Rs. 13-14, annual rent and made a settlement for them at the new rate. According to the purport of Regulation XI of 1825, Section 4, first paragraph, it is written that without getting an Estemoorary from Government, no Zemindar can settle alluvial land with ryots or has power to fix the rate of rent at less than is customary; their doing so cannot be considered in any way just and proper *with respect to the above-mentioned chur lands, and according to the decrees referring to alluvial land, the Government is the only party entitled to get the rent and no ryots can lease from the Zemindar, or obtain by purchase any such* lands or get decrees of Court or take possession without an arrangement with the Government for the proper rent.

It is ordered that a copy of this Roobacary, together with all the settlement papers of this order, be sent to the Collector, according to the above written particulars, and according to the measurement of the land made in the year 1844, and the settlement then made at the fixed rate of Rs. 5-5-4 per beegah; and after arranging with the above-mentioned owners of the land and deducting their expenses of collection and malikana, the settlement papers be sent to this Court for approval.

1839

Appendix B.

List of Tenants in No. 12 Chur Land at Salkea.

Settled by Regulation 7 of 1822, with the ryot at Rs. 5-5-4 per beega, and afterwards with the zemindars for collection, who are paid 25 per cent of the gross total of collections for their trouble. All the ryots paying alike therefore all are paying the prevailing rate. This present state of the Jammabandi has been arrived by decrees given through the ignorance of logic and law by the various Judges. All improvements by which the earnings are alone realised have been made solely by the exertions and expenditure of the ryot, consequently the rates were raised contrary even to Act X of 1859 which gives all the profits made by the exertions of the ryot to him.

Chitta No.	Names of Tenants.	Joint 10 & 6 annas zemindars.			10 annas zemindars.			6 annas zemindars.			Total rate per biga now levied		
1	Doyaram Nusker, Present Anukul Mookerjee	..	...	..	50	0	0	5	5	4	50 5	0 5	0 4
2	John Stalkart & William Stalkartt ...	5	5	4	..	...	..	...	.		5	5	4
3	John Stalkartt	.	..	..	...	..	...	..			...	...	.
4	Biswanath Biswas	5	5	4	...	...	...	...	.	.	5	5	4
7	Modun Mohun Banerjee Present Rameshur Malia	5	5	4	...	...	...	...	..	.	5	5	4
6 & 8	Aktar Sirkar Present Jetan Bibee .	.	..	...	33	0	0	20	0	0	33 20	0 0	0 0
9	Ram Sing Chowdhari Present Mohur Sing Chowdhari .. .	20	0	0	..	...	...	.		.	20	0	0
11	Mukdom Bibee, Sodat Alli ...	26	0	0	..	...	..	...	.		26	0	0
12	Nyaj Bibee, Sodat Alli	10	0	0	...	...	..	...	.	.	10	0	0
13	Joynarain Shaw, minor son Denendronauth Shaw, Exta. Sundari Dassee	20	0	0	...	..	.	..	.	..	20	0	0
14	Doyal & Luckhynarain Sett ...	..	.	.	32	0	0	20	0	0	32 20	0 0	0 0
16	Rajkissore Mookerjee	in dispute.											
17	Modu Sooden Koondoo	...	..	...	..	...	...	240	0	0	240	0	0
18	Biswanath Banerjee, Dewis Doorga Moni and Bramha Moyie	25	0	0	...	...	..	...	..	..	25	0	0
19	Brindabun Chundra Dutt ...	20	0	0	...	.	..	..	...	.	20	0	0
21	Dhongazie, Present Madhow Chunder Ghose	50	0	0	...	...	..	...	...	..	50	0	0
22	Imambuksoo Jamadar Present Sadat Alli	20	0	0	...	..	..	...	...	...	20	0	0
24	Asutosh Dew, *Ghaut*	Rent free.											
26	O. P. N. Company	120	0	0	...	..	..	...	...	..	120	0	0
28	Mr. Reid, Dwarkanath Mullick ..	100	0	0	..	.	...	...	..	..	100	0	0
30	Mackinnon Mackenzie & Co. ..	100	0	0	...	..	...	...	.	...	100	0	0

The Zemindars have tried by lawsuit to raise the rental of plot No. 2 from Rs. 77 to Rs. 2,778. This will give some idea of the oppression of which we speak.

SUPPLEMENT.

Meeting held at Raputa by the Ryots of the surrounding villages, March 25th, 1881.

BABOO RANGALAL MUKERJEE in the Chair.

First Resolution.—Moved by Babu Upendra Nath Mukerjee, Raputa,
Seconded by Babu Rakhaldass Mukerjee—

That among the many blessings which the Government have conferred on the people of Bengal, the Permanent Settlement,—Reg. 1-48 of 1793—is the greatest and noblest. Its provision for the non-enhancement of rates of rent upon the ryots has occasioned their settling, and thereby they have given their attention to the cultivation of the soil, consequently their industry under the protection of God has enabled the Government to ward off the blows of famine and in some measure improved the position of the people till the year 1859, when Act X. of that year came into operation, since when the Zemindars through the Courts of Judicature have greatly oppressed the ryots; therefore the Meeting proposes that the opinion of the late Maharajah Rammohun Roy, (himself a zemindar of considerable estates), expressed at the Committee in England appointed by Parliament to enquire into this present question in 1831-32, be forwarded *in extenso* to Government, as it almost expresses the same opinion by the Marquis Cornwallis in 1790.—Page 441, Report of Rent Commission.

(1.) "A declaration by Government that the Zemindars and farmers had oppressed the ryots."

(2.) "A public declaration by Government that it did not intend to enhance rents, but to fix such as were legal on a permanent basis; to secure the ryots in the enjoyment of their property against all oppressions by Zemindars or farmers; and that *the residue of the produce, after satisfying the Government demand,* should be retained by the ryot for the support of his family."

(3). "A declaration by Government that it was necessary to secure the ryots in the perpetual and undisturbed possession of their lands, and to guard them against arbitrary exactions."

(4.) "A declaration by Government that there was no foundation of right, no colour of pretence, for the ejectment of ryots."

Extract from the Report of the Committee in England, 1831-32, *on the examination of the late Maharajah Rammohan Roy, (to be found in the Bengalee School Books.)*

Q. "What is the condition of the cultivators under the present Zemindary system of Bengal, and Ryotwary system of the Madras Presidency.

A. "Under both systems the condition of the cultivators *is very miserable;* in the one they are placed at the mercy of Zemindar's avarice and ambition, in the other they are subjected to the extortions and intrigues of the surveyors and other Government revenue officers. I deeply compassionate both, with this difference, with regard to the peasantry of Bengal, that the landlords have met with indulgence from Government in the assessment of their revenue, while no part of this indulgence is extended towards the cultivators. In an abundant season, when the price of corn is low, the sale for their whole crops is required to meet the demands of the land-holders, leaving little or nothing for seed or subsistence to the labourer or his family.

Q. "Can you propose any plan of improving the state of cultivators and inhabitants at large?

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A. "The new system acted upon during the last forty years having enabled the landlords to ascertain the full measurement of the lands to their own satisfaction, and by successive exactions to raise the rents of the cultivators to the utmost possible extent, the very least I can propose, and the least which Government can do for bettering the condition of the peasantry, is absolutely to interdict any further increase of rent on any pretence whatsoever."

Second Resolution.—Moved by Babu Annadaprosad Chatterjee,
Seconded by Babu Aghar Nath Banerjee.—

That having regard to the provisions of the Permanent Settlement in 1793 by the Marquis Cornwallis, which reassure to the ryots protection from all hardships and arbitrary extortion "future ease and happiness," this Meeting begs to record its emphatic protestation against the Draft Rent Bill amended by Mr. Reynolds, which vitally destroy the rights and interests of the ryot.

1*st.*—In Section 10 doubling the rent every 10 years; this for every rupee of rent paid this year would become at the end of a century from Rs. 1,000 to 2,000 per bigha, and the cost of rice 250 to 500 per maund. This defeats the object of all good Governments, which is to supply cheap food to the masses of the people. In England they have abolished the Cornlaws. In France if the price of bread exceeds a certain fixed rate, then the Government pay the excess.

2*nd.*—In continuing the objectionable clauses at page 11 Section 22, Clauses I., III. and IV., to retain No. 1 under the nomenclature of enhancement is improper, as this solely refers (1) to the equalising of rates of revenue. No. 3—For that which it supposes that the productive powers of the lands can increase without the agency of the ryots is literally impossible, which is so true that there is no occasion for us to discuss this matter, so we simply say it should be struck out of the Rent Bill.

4*th.*—In Bengal the Zemindars are in most cases mohajuns or bankers of the ryots, so it is impossible for the ryot to get any advantage from the prices in the locality or the usual markets having advanced, therefore if the ryot gets any increase it must be by his own cleverness or agency; therefore this clause is a nonentity, and should be struck out. If by these two clauses the rate could be enhanced, then it must be reduced to that of the prevailing rate,—that of the 1st clause, and overrules the others.

Section 6, *Chapter* 6.—This is not so favorable to the ryots as in Act X., for in that Act the ryot had only to show that his rent had not been changed for 20 years, whereas by the new law it is from 1839 to this present time 1881, this is 42 years, and every year makes it worse and worse instead of better. It is also almost impossible for the ryot to shew receipts of rent for 20 years. 1*stly*, because the paper on which it is given is so inferior that they cannot possibly last for great length of time, considering they have no proper place to keep the papers in—perhaps only an earthen vessel or *handi*, without cover, where insects can easily attack it.

The houses of the people are really only what would be called hovels in England. They are principally made of mud with a roof of bamboos and thatch, which certainly requires to be renewed every 6 years; in renewing it requires taking down of the whole of the thatch, so that the interior of the house is exposed to winds of heaven: of course this is 7 times in 42 years. There is also chances of fire, as the huts have no chimneys. It materially lessens the probability of the ryot being able to shew receipts for 40 years. The utmost length of time for which we can expect the ryots to shew their receipts is 10 years, but as we ask fixity of rates, last year's receipts would be sufficient. Again the receipts are such little pieces of paper that it is a wonder that they are not lost.

Section 21, *Clause III.*—No rent should ever exceed 1 quarter of the gross produce, *where payments have been originally made in kind* and where a suit is liable.

That according to the custom in Bengal at the time before and after the Permanent Settlement, payment in money has always been the custom, therefore in Bengal we wish that this custom be continued. To apply the above rule will lead to much confusion, as the rates

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would vary year by year, and the Zemindar's object of prompt payment of the ryots' rent would be defeated. The Zemindar's desire is to get payment from the ryot before he has to pay the Government rent, and if he has to sell the produce he could not receive it till 3 to 6 months after the time when Government revenue is due, unless he sold it at a loss. Hence all payments should be in money, and as the above rule of division of crop is not applicable, we desire that fixed rents, if there is any dispute, may be determined without intervention of a lawsuit. In other words, the Collector may be appointed to adjust the rates before they are due; and till this takes place, the rent paid last year should be the only one at present authorized by law.

When the Zemindar refuses to take the year's rents due on the basis of last year's rent, then the ryot shall have the privilege of paying it into the Collector's Court by a Post Office Order, stating all particulars, so that the Collector may be able to give him a proper receipt accordingly. At the same time he must send in 8 annas to cover the expenses in the Collector's Office. The notice should be sent to the Zemindar by a registered Post Office card.

Ejectment.—This is not the right of the Zemindar on any pretence whatever, therefore it should be expunged from the Bill, even the supposition that he might have a right, would lead to such abuses that we cannot permit it even to be thought of.

Chap VI., of Merger.—The whole of this chapter should be excluded. It will lead to interminable disputes and oppression of the ryot, for not a single ryot's title will be safe.

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To

THE HON'BLE SIR ASHLEY EDEN, K.C.S.I.,

Lieutenant-Governor of Bengal.

The humble Memorial of the undersigned Ryots of Burdwan, Burdhwan, Hooghly and the 24 Pergunnahs

RESPECTFULLY SHEWETH,

THAT your Petitioners feel deeply grateful to Your Honor for the anxious interest you have always felt in the welfare of the peasantry of Bengal. It was with a view to improve the condition of the peasants, and to place on a satisfactory footing the existing relation between landlords and tenants, that Your Honor was pleased to appoint a Commission to collect information and to draft a Bill on the Rent question. To make the inquiry still more complete, Your Honor was pleased to appoint the Hon'ble Mr. Reynolds, especially in charge of the Bill, and portions of Mr. Reynolds' Bill have already been published.

2. Your Petitioners regret that they are obliged to take exception to several of the provisions of the new Bill and to the changes which have been introduced by the Hon'ble Mr. Reynolds in several important sections of the Bill as drafted by the Rent Commissioners. In the first place, your Petitioners will beg leave to protest against the provisions of Sections 6 and 16 of the new Bill. Under the provisions of Act X of 1859 and of Act VIII of 1869 (B. C.), as under those of the Bill as drafted by the Rent Commissioners, it was necessary for ryots and tenure-holders claiming a fixed rent to show that they had been in possession of their holding at such fixed rent for twenty years previous to the institution of the suit. This salutary provision of the law it is now proposed to alter, and if the sections to which your Petitioners have called attention were to be incorporated in the proposed Rent Law, a serious blow would be dealt at the interests of the ryots. Your Honor, whose knowledge of the country is so great, cannot be unfamiliar with the fact that rent receipts are for the most part given in loose sheets of paper of the worst kind which are stored away by the ryots in *handis* and other receptacles of a similar nature; and that it would be next to impossible, in a climate like that of this country, to preserve them for more than twenty years at the outside. But admitting

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that these receipts might be preserved, if proper care were taken of them, it is hopeless to expect that men in the position of your Petitioners, without any education, and who cannot take care of their own interests, would be found able, as a rule, to produce receipts extending over a period of nearly 40 years. It must also be obvious that with each year it would be more and more difficult for the ryot to substantiate his claim to a fixed rent. If the sections were to be in force from next year, it would be necessary for the ryot or the tenure-holder to shew that for 43 years previous to the institution of the suit he had been in possession of his holding at a fixed rent; the year after, it would be necessary to shew that for 44 years the holding had been in his possession at a fixed rent. Thus from year to year, the ryot would find it more and more difficult to substantiate his claim to be allowed to retain his holding at a fixed rent, until at last after the lapse of a few years, it will no longer be possible for an y ryot or tenure-holder to substantiate such a claim. Your Petitioners would therefore most respectfully pray that Your Honor will be pleased not to allow any change in the existing law. Indeed your Petitioners would be glad if, instead of being called upon to produce evidence extending over 20 years to substantiate a claim for fixed rent, the period was reduced to 12 years.

3. That your Petitioners are deeply grateful to Your Honor for the intention you have expressed to confer the occupancy-right upon all settled cultivators, the Khoodkast ryots of the Permanent Settlement; but they regret to find that the Bill as drafted by Mr. Reynolds takes away a right which the Rent Commissioners desired to confer upon them under their Bill. Ryots who had been in continued possession of their holdings for a period of 12 years and more were declared occupancy-ryots under the old Bill. This right is taken away from Paikast ryots under the provisions of the new Bill. Your Petitioners would respectfully pray that Paikast ryots, who have been or shall be in continued possession of their land for a period of 12 years and more, may be placed on the same footing with Khoodkast ryots, and may be declared to be ryots enjoying the occupancy-right. It cannot be to the good of the State or conducive to the welfare of the agricultural community that any portion of that community should be reduced to the position of mere tenants-at-will, who may be evicted from their lands at the will of the zemindar, and who, in this respect, is at liberty to exercise an unbounded discretion, unfettered by any salutary provision of the law. But under the Bill as drafted by Mr. Reynolds, Paikast ryots have virtually been reduced to this position, for under its provisions ryots are not allowed to retain their land against the will of the zemindar, though under the Bill as drafted by the Rent Commissioners, ryots who had paid rent for three years could not be evicted, so long as they paid their rent regularly. Your Petitioners would respectfully pray that in this respect the provisions of the old Bill might be embodied in the law which Your Honor may think necessary to enact.

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4. Referring to the provisions for enhancement of rent, your Petitioners would submit that Your Honor will be pleased to enact that the rate of enhanced rent shall not be liable to a further enhancement during a period of thirty years for land held for ordinary agricultural purposes, and for sixty years as regards land on which permanent works have been raised. Your Petitioners claim the Permanent Settlement as their *Magna Charta* as much as the zemindars do, and as under the regulations relating to that settlement, it is not competent to the Government to claim an enhanced revenue from the zemindars, so in the same way, and under the self-same provisions, it is not competent to the zemindars to demand from the ryots a higher rate of rent than the Pergunnah *nirikh*. But the intention of this benevolent provision has been more honoured in the breach than in the observance thereof. The zemindars have been all powerful; and though the rent payable to the zemindar was fixed in the same way as the revenue payable by him to Government, the zemindar has gone on enhancing his rent, and what indeed is truly remarkable, the Legislature has ratified with its authority the power of the zemindar to claim enhancement of rent, a power expressly taken away from him by the provisions of the Permanent Settlement. Under the provisions of the Permanent Settlement, your Petitioners may claim that the Pergunnah *nirikh* of those days be declared to be fixed for ever. But they are aware that it would now be extremely difficult, after the lapse of a century, to ascertain the Pergunnah *nirikh* that obtained at the time of the Permanent Settlement; it would be equally difficult now perhaps on the part of the Government to declare the rate of rent of the ryots to be fixed for ever, for the Government has practically recognized the right of the zemindar to enhance the rate of rent payable by the ryot, from time to time. But your Petitioners cannot but complain that the time during which rents shall not be liable to enhancement has been limited to only ten years, which actually places the Bengal ryot in a worse position than that of the ryot in Upper India and Bombay, with whom the Government fixes the rent for 30 years, during which it is not liable to enhancement. Further, your Petitioners cannot but regret that it is proposed to allow the zemindar to raise the rent to double its former rate. It must be obvious that less the liability on the part of the ryots to comply with constant demands to pay increased rents, the greater is the chance of their spending capital upon their land, and thus improving their property and enriching the country. Your Petitioners would therefore pray that Your Honor will be pleased to enact that the limit of enhancement shall not exceed an anna in the Rupee of the old rent, and that as regards land used for ordinary purposes, the rate of enhanced rent shall not be liable to enhancement for a period of thirty years, and that as regards land where buildings or other permanent erections are raised, the rate of enhanced rent shall not be liable to enhancement for a period of 60 years from the date on which such enhancement takes effect. The question of measurement is intimately connected with that of enhancement. Different standards of

measurement lead to a great deal of oppression. Your Petitioners therefore pray that a uniform standard of measurement should be adopted throughout the Province, and that no departure from this uniform standard should be allowed in deference to local custom.

5. Your Petitioners would crave leave to be allowed to protest against those sections of the draft Bill, as prepared by the Rent Commissioners, under which jurisdiction is conferred upon the revenue authorities to take cognizance of rent-suits. Your Petitioners are of opinion that the cumbrous machinery provided for the disposal of rent-suits in the Rent Bill is unnecessary, and that the rapid disposal of such cases would be greatly facilitated by the appointment, if necessary, of additional Moonsiffs, who shall take cognizance exclusively of rent-suits. Your Petitioners submit that it would also be a great advantage if they were allowed to deposit their rents in the Moonsiff's Court, and by means of Money Order. Your Petitioners regret to say that in Mr. Reynolds' Bill, the law of distraint has been introduced which the Rent Commissioners thought was oppressive, and which they had removed from their Bill. Your Petitioners can bear their personal testimony to the oppression which the practical working of this law is attended with in the Mofussil ; and they fervently hope that the exceptional powers implied in this law will be taken away from the zemindars.

6. Your Petitioners have now laid their prayers before Your Honor in connection with that important question which Your Honor is so anxious to settle. Your Honor is the truest friend of the people; Your Honor was the champion of the people during the indigo-crisis ; and your Petitioners hope that the last act of Your Honor's distinguished career in India will be the enactment of a law, which, while it will not interfere with the just rights of the zemindar, will at the same time restore to the ryots some of those precious rights which were guaranteed to them by the Permanent Settlement, but which have been taken away from them, because they themselves were ignorant and poor, and the zemindars were all powerful.

And Your Petitioners, as in duty bound,
shall ever pray.

Stanhope Press, Calcutta.

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The Indian Association Office;
93, College Street, Calcutta,
~~19th July 1880.~~
27th June 1881.

To

THE HON'BLE A. MACKENZIE,

Secretary to the Government of Bengal.

SIR,

I AM requested by the Indian Association to submit the following observations in reply to the letter of Government dated the 19th July 1879

2. Since the receipt of the Government letter, the Association have endeavoured to ascertain the views of the ryots and of those interested in their welfare. The public meetings of the ryots that have been held in different parts of the country—at Kissengunge, Poradaha, Gooshpara and Gopalpur, in the Nuddea district, at Lagusai in Beerbhoom, at Rahita in the 24-Pergunnahs, at Boidyabatti in Hooghly, at Burdwan, and in the town of Calcutta itself, have enabled the Association to form a tolerably correct idea of the views of the ryots themselves upon the many important provisions of the Rent Bill; and while the Association will not give their unqualified support to the views expressed by the ryots at their different meetings, they think it important that Government should know what the views of the ryots are, in connection with those questions in which they, more than any other section of the community, perhaps, feel deeply interested.

3. The Association cannot sufficiently express their obligations to the Government of Sir Ashly Eden for the warm interest it has felt in the welfare of the ryots. It is notorious that the relations between landlords and tenants are in a most unsatisfactory state and have been so for a number of years. The circumstances of the case urgently called for legislative interference. Sir Richard Temple, on the eve of his laying down the reins of office, was anxious to introduce a Bill which would place the relations between landlords and tenants on a more satisfactory footing; and among the questions which Sir Ashley Eden took up at once, on assuming the government, was this question relating to the settlement of the relations between landlords and tenants. That Government has every right to interfere for the benefit of the ryots by legislative enactment is what will not admit of a moment's doubt. Section VIII of Regulation I of 1793 expressly reserves this power to the Government. The Section says:—

To prevent any misconstruction of the foregoing articles (fixing the Government revenue for ever) the Governor-General in Council thinks it necessary to make the following declarations to the zemindars, independent talookdars, and other actual proprietors of land. First—It being the duty of the ruling power to protect all classes of people, and more particularly those who from their situation are most helpless, the Governor-General in Council will, whenever he may deem it proper, enact such regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots and other cultivators of the soil; and no zemindar, independent talookdar, or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment, which they have respectively agreed to pay.

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Then again the Court of Directors, in one of their despatches, previous to the conclusion of the Permanent Settlement, declared as follows :—

We, therefore, wish to have it distinctly understood that, while we confirm to the landlords the possession of the districts which they now hold, and subject only to the revenue now settled, and while we disclaim any interference with respect to the situation of the ryots, or the sums paid by them, with any view to an addition of revenue to ourselves, we expressly reserve the right which clearly belongs to us, as sovereigns, of interposing our authority in making from time to time all such regulations as may be necessary to prevent the ryots being improperly disturbed in their possession, or loaded with unwarrantable exactions. A power, exercised for the purpose we have mentioned, and which has no view to our own interests, except as they are connected with the general industry and prosperity of the country, can be no object of jealousy to the land-holders, and instead of diminishing, will ultimately enhance the value of their proprietary rights. Our interposition, where it is necessary, seems also to be clearly consistent with the practice of the Mogul Government, under which it appeared to be a general maxim, that the cultivator of the soil duly paying his rent, should not be dispossessed of the land he occupied.

4. The power of the Government to enact laws from time to time for the benefit of the ryot being thus unquestioned, and the necessity for such interference in the present relations between landlords and tenants being equally clear, the Association venture to think, the Government very wisely resolved to appoint a Commission which would collect information, digest the materials, and finish their labours by the submission of a Bill. The *personnel* of the Commission was such as was calculated to assure the friends of the ryots that substantial justice would be done to them. Mr. Mackenzie, Mr. O'Kinealy, and Mr. Harrison were gentlemen who combined an intimate knowledge of the land system of the country with deep sympathy with the peasantry, and a living interest in their welfare; and with certain modifications, to which attention will presently be drawn, the Association are prepared to offer their support to the draft Bill. They certainly prefer the draft Bill of the Rent Commissioners to that prepared by the Hon'ble Mr. Reynolds. Mr. Reynolds' Bill does not traverse the entire ground covered by the Bill of the Rent Commissioners, and the Bill prepared by that gentleman, as it is, is open to serious objections, and is, the Association submit, highly detrimental to the interests of the ryots in many important respects.

5. The most important portions of the Bill, as drafted by the Commissioners, may be divided under the following heads :—

(1) The provisions relating to occupancy-holdings.

(2) The provisions connected with enhancement of rent and the law of distraint.

(3) The law of procedure.

6. Now with reference to occupancy-holdings, the Association are of opinion that such tenures should be made transferable, and they have great pleasure therefore in giving their support to Clause B of Section 20 of the draft Bill of the Rent Commissioners. As a matter of fact, in many districts, local custom has already made occupancy-tenures transferable, and the tendency is indeed general for such holdings to become saleable. It is to be regretted that the zemindars have thought it fit to object to this incidence being attached to occupancy-tenures. They say, the incidence involves a direct infringement of the old Regulations. It might be asked—are the zemindars prepared to go back in every particular to the old Regulations connected with the Permanent Settlement? If they are, the ryots and their friends would want

nothing more; for it cannot be forgotten that under the Regulations of the Permanent Settlement, the zemindars have no power to enhance rents beyond the Pergunnah-rate—the rate that prevailed in the Pergunnah at the time of the Permanent Settlement. It is to be feared the zemindars would object to the Pergunnah rate of rent being unalterably fixed, beyond which it would not be possible for them to raise the rate. But surely it is both opposed to reason and to all sense of fairness that zemindars should repudiate the portion of the Regulations which would be to the benefit of the ryot, but that they should be allowed to seek shelter behind that, which, if it is not an omission in the old Regulations, is certainly not opposed to their tenor, and for which authority has been reserved by the terms of those Regulations.

7. Nor is it possible to over-estimate the benefit which the bestowal of this right would confer on the peasantry as well as on the zemindars. The prosperity of the peasantry means the prosperity of the zemindar. A teeming population of impoverished ryots is what no prudent zemindar would like to have on his estate. If the ryots find it hard to maintain themselves, they will find it much harder to pay their rents. If, on the contrary, they are prosperous and well-to-do, they will pay the rents punctually, the zemindars will get their dues, there will be less of litigation, less of those bitter and angry feelings which now unhappily characterize the relations between landlords and tenants. Moreover, the draft Bill provides that the occupancy-holding is liable to sale, for the realization of arrears of rent. It is a decided advantage to the landlord to have another ready means placed at his disposal for the realization of arrears of rent. This will ensure the more punctual and regular realization of his dues. The benefit to the ryot, on the other hand, will be simply incalculable. Fixity of tenure on fair and equitable rents is the foundation of the agricultural prosperity of a country. Assure the ryot that so long as he pays his rents regularly, he will be left in the undisturbed enjoyment of his holding, and he is furnished with the strongest incentive to the improvement of the land. To cite a few instances out of many which might be quoted, the cultivators of the district of Chittagong enjoy a fair degree of security of tenure, and His Honor is aware what large sums they expend out of their own incomes to build embankments to keep out the sea-water and improve their land. In Backergunge also, where the cultivators enjoy a very fair degree of fixity of tenure, the expenses which they incur to improve their lands, and specially their homestead lands are not unknown to the authorities. On obtaining or buying a holding, the cultivator often plants it out with Mandar plants, if he intends to make it into a betel-nut garden. A few years pass, and the Mandar plants grow up, and then the cultivator plants young betel-nut trees in the shade of the Mandar. Years pass on before these young plants are able to bear fruit, and all this time the ryot has been paying rent *kist* after *kist* from his own pocket without a penny of return from the land. His reward, however, comes in the end, and an extensive forest of betel-nut trees smiles round his homestead in time, and ensures to him a source of income which he hopes to transmit to his sons and his sons' sons Visitors have been struck with the extensive and lucrative betel-nut gardens almost all over this district; but few have stopped to think that the secret of this phenomenon is the security of tenure of the Backergunge ryot, and the pos-

session of a kind of property in the soil which induces and enables him to labor patiently year after year to enrich the land and the country. When these instances are compared with that of the ryots of Behar under the Ticcadari system,—ryots who spend no money on their lands, who have no idea to improve their lands, it will be at once manifest that in Bengal at least, improvement of land, and the consequent enrichment of the country, depend on protection and security bestowed on the cultivators. Withdraw that security, and the Bengal ryot who well understands his own interests will cease to spend any capital on his land, will decline to improve the soil which may pass to the zemindar the next day. Extend that security, and the strongest of human motives,—self-interest,—will induce the ryot to enrich his land and enrich his country. The absolute correctness of these facts are known to every impartial observer who has marked the progress of agriculture in Bengal, and must surely be known to so careful and accurate an observer as His Honor the Lieutenant-Governor of Bengal And it is the knowledge of these facts that makes the Indian Association welcome the new provisions relating to the protection of all resident cultivators, provisions which will necessarily conduce to the prosperity and well-being of the country and the people.

8. The Association rejoice that both in the draft Bill and the Bill prepared by Mr. Reynolds, it is proposed to make occupancy-holdings saleable. But if the tenure is made saleable, the Association are of opinion that it should be also allowed to be mortgaged. They are glad to find that in the Bill, as amended by Mr. Reynolds, the clause which prohibited the mortgage of occupancy-holdings has been omitted. The privilege, however, has been rendered practically null by prohibiting the sale of the holding in execution of a decree upon the mortgage bond; for the draft Bill as well as Mr. Reynolds' Bill provide that an occupancy-holding shall not be saleable in execution of any other decree, save and except a decree "passed for arrears of rent." Now the effect of the restriction would be that it would be impossible for the ryot to obtain money upon the mortgage of his tenure, for no man would advance him money on the mortgage of property which could not be sold in execution of a decree obtained upon the mortgage bond. If it should be thought proper to allow the ryot to raise money upon the mortgage of his tenure, it does not appear very clear why the right of the mortgagee should be fettered to an extent which will practically deprive the ryot of the boon which is sought to be conferred upon him. The restriction, the Association would repeat, would practically amount to a withdrawal with the one hand of a boon which is sought to be conferred with the other. The Association do not share the alarm that is felt in some quarters at the ryots being allowed to mortgage their holdings. They do not apprehend that the result of such a concession would be a wholesale transfer of occupancy-holdings into the hands of money-lenders. It is altogether a mistake to suppose that the Bengal ryot, when he has the opportunity, will run into debt, in order that he may have the pleasure of depriving himself of any kind of property that he may possess. In Backergunge, Chittagong and other districts, the salutary effect of the possession of property upon the habits and character of the peasant is very evident. In these districts, as has already been seen, where the ryots enjoy a certain degree of fixity of tenure, and possess a certain kind of property, instead of wasting their pro-

perty upon expensive marriages and expensive *shrads*, they take every care of their holdings, and no pains are spared to improve them and to make them a source of profit. The right to mortgage the occupancy-tenure will again enable ryots to borrow money at a comparatively lesser rate of interest than what is now paid. The greater the security the creditor has for the realization of his money, the less will be the rate of interest he will charge; but if he does not possess the right to sell the property mortgaged to him, it is evident that he does not possess a ready means for the realization of his money, and must therefore charge a higher rate of interest. The greater the facilities created by the Legislature for the realization of money lent to the ryots, the less will be the difficulties capitalists will feel in helping them with loans; and it is not perhaps unreasonable to expect that increased facilities in this direction may eventually lead to the establishment of Agricultural Banks in the Mofussil which, by lending the ryot money at a low rate of interest, will materially tend to improve the agricultural prospects of the country and the condition of the ryot himself. Altogether, therefore, the Association submit, there is no prospect whatever of the ryots ruining themselves by being allowed to mortgage their holdings. As the right has been conferred upon the ryot to mortgage his holding, by the withdrawal of the restriction provided in the draft Bill, and which has been referred to above, the Association would respectfully urge upon the Government the propriety of allowing the ordinary law of the land to take effect in regard to mortgage-bonds relating to occupancy-tenures.

9. The Association will now proceed to consider the question as to what will constitute an occupancy-tenure. Section 19 of the draft Bill says that "subject to the provisions of section 11, any ryot who, for a continuous period of 12 years, has, as a tenant, held or has, as a tenant, occupied and cultivated land, and paid rent for the same, has a right of occupancy in the land so held or occupied and cultivated by him, whether held or occupied under a lease or otherwise." Continuous possession for 12 years, and the payment of rent during that period entitle the ryot to the rights incidental to the occupancy-tenure. This has been the law since 1859. Mr. Reynolds' Bill, however, seeks to introduce an important change in the Bill. Section 18 of that Bill provides that "every settled ryot has a right of occupancy in the land which he holds or cultivates as a tenant, whether such land be held under a lease or otherwise.

Explanation 1.—A settled ryot is a ryot who has his fixed habitation in the village or estate in which he holds or cultivates land as a tenant; or whose fixed habitation is within a distance of two miles from the lands which he holds or cultivates as a tenant."

10. By the old Regulations, the *khoodkast* ryots are entitled to the privileges attached to the occupancy-tenure, and the Association are deeply grateful to His Honor for his declaration that the "Lieutenant-Governor desires to see occupancy-tenure made the rule and not the exception." Unquestionably "a substantial tenantry, free from debt and in a position to save and bear the pressure of occasional bad season, is what Bengal requires."

11. The Association appreciate the spirit of the Section just quoted from Mr. Reynolds' Bill. They feel that all resident cultivators should enjoy the occupancy-right, but they cannot accept the explanation given. The explanation given

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will deprive all *packast* ryots of the occupancy-right which, ever since 1859, they have been able to acquire by continued possession, extending over a period of 12 years. If as His Honor the Lieutenant-Governor proposes, and the Association venture to think very properly, that the occupancy-tenure should be made the rule and not the exception, it would hardly be consistent with that declaration that the boon should be confined only to ryots who have a fixed habitation in the village or estate in which they cultivate or hold land as tenants, or to those whose fixed habitation is within a distance of two miles from the lands which they hold or cultivate. Nor is the consideration to be overlooked that it often happens that ryots hold land in several villages; and in the sense of a fixed habitation in any village they have none, for they move from one place to another according to their requirements. These ryots are known under the name of *Dowallabari* ryots. Surely it is not intended that they should not enjoy the occupancy-right; but under the terms of the explanation appended to section 18 of Mr. Reynolds' Bill, they certainly could never come to possess the occupancy-right. The Association would accordingly submit that a settled ryot, under the provisions of Section 18 of Mr. Reynolds' Bill, should be defined as a ryot, who for a continuous period of 3 years has, as a tenant held, or has, as a tenant, occupied and cultivated, land and paid rent for the same. This was the view of His Honor the Lieutenant-Governor, expressed in a letter addressed to the British Indian Association last year; and the Indian Association have great pleasure in supporting this view.

12. The Association would now proceed to offer their observations on the provisions relating to enhancement of rent. His Honor the Lieutenant-Governor is resolved to secure fixity of tenure to all occupancy-ryots. It is true that ryots enjoying the occupancy-tenure cannot be evicted even for non-payment of arrears of rent; but their holdings might be sold in execution of a decree for arrears of rent. The question of enhancement is thus intimately connected with that of fixity of tenure; for it is obvious that, if the power of enhancing rents is not controlled by proper checks, fixity of tenure can only exist in name. If landlords were at liberty to enhance rents whenever they pleased, and to any amount they pleased, ryots could not be expected to continue in possession of their land for any length of time; and though fixity of tenure might be secured to them by the most stringent provisions of the law, the boon would be incompatible with unlimited facilities given to landlords to enhance rents. As regards occupancy-ryots, under the provisions of the draft Bill, as well as those of Mr. Reynolds' Bill, a landlord is entitled to enhance the rent payable to him in money upon any one or more of the following grounds :—

(1) On the ground that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity;

(2) on the ground that the quantity of land held by such ryot has been shown by measurement to be greater than the quantity for which rent has been previously paid by him;

(3) on the ground that the productive powers of the land held by such ryot as compared with such powers at the time when the rent was fixed, or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual;

(4) on the ground that the prices of produce in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time, have increased otherwise than by the agency or at the expense of the ryot, and from causes not merely temporary or casual.

In any case, in which the rent of an occupancy-holding is enhanced upon the third or fourth ground, the enhanced rent shall not be more than double the rent previously paid (Section 23 of the draft Bill). Such are the provisions relating to enhancement of rent as regards occupancy-holdings. With regard to ryots not enjoying the occupancy-right, the provisions in Mr. Reynold's Bill relating to enhancement of rent are as follows :—

Ryot who does not possess a right of occupancy not liable to pay higher rent, unless there be a written agreement, or unless a notice has been served.

29. (1) A ryot who does not possess a right of occupancy shall not be liable to pay a higher rent than that payable by him for the previous year, unless a written agreement has been entered into by him and his landlord for the payment of such higher rent ; or unless a notice demanding such higher rent has been served upon him within the time provided in Clause (2) of Section 27 for the notice therein mentioned.

Such ryot served with such notice may relinquish land If he do not, he is liable to pay increased rent demanded.

(2) When a notice demanding higher rent has been served upon any such ryot as provided in Clause (1), such ryot, if he is unwilling to pay such enhanced rent, may relinquish the land before the first day of the year next ensuing after service of such notice If he does not so relinquish the land, he shall be liable to pay the increased rent demanded by such notice from such first day of the year next ensuing : provided that he shall not in any case under this rule be liable to pay more than double the former rent.

Explanation.—When any such ryot is served with a notice to quit or pay a specified increased rent, and he elects to remain in possession of the land mentioned in such notice, the tenancy is not thereby determined, and such notice shall be treated as a notice under Clause (1).

13. The Association gratefully acknowledge an improvement in the law as regards the provisions relating to enhancement of rent in the case of such ryots as do not enjoy the occupancy-right. Under the existing law, as the Rent Commissioners point out, "there are no express provisions for enhancement, and the practical result is that if any ryot not having right of occupancy refuses to pay an enhanced rent demanded of him, he is evicted by his landlord," though it is true that if he is allowed to remain, more than a reasonable rent cannot be recovered from him. It is much more satisfactory that the maximum limit of enhancement should be definitely laid down, than that it should be left to the discretion of the authorities in each particular case, as to what constitutes "reasonable rent." But while the Association have to record their acknowledgments for the proposed change, they cannot help thinking that the maximum limit of enhancement has been fixed too high.

14. The Association would recommend that the increment should not be over half the former rent, and that this rule should be applicable when the rent is enhanced on the first ground, as well as when it is enhanced on the third and fourth. The Association cannot state their reasons for this recommendation better than in the words of the Report of the Rent Law Commission. "It usually happens that the causes * * are gradual in their operation, and the cultivator gradually gets accustomed to the enjoyment of the increase. To have to give up and hand over to his landlord any part of what he has appropriated and learned to regard as his own, seems hard to a person, who, like an uneducated cultivator, is more

prone to consider the present grievance than the past benefit which he has been enjoying. If so much is suddenly taken as to affect a sensible change in his position and standard of comfort, a feeling of injury is excited which, it is impossible to say, has not some foundation in reason." If a man who has paid Rs. 2 per bigha for years past, is suddenly called upon to pay Rs. 3 per bigha, there is no doubt he will feel the difference very much as his standard of living has probably improved in proportion to the profit he has got out of his land after paying rent. Nevertheless, the Association would allow this enhancement, but they would fix it as the maximum. To ask that cultivator to pay Rs. 4 would indeed be a grievous injury to him, and would be little short of compelling him to leave his land. The Association approve of the retaining of the old grounds of enhancement in the case of occupancy-ryots; but when rent is enhanced on the third and fourth grounds, the Association agree with Messrs. Mackenzie and O'Kinealy in thinking that two-thirds of the increment should be given to the ryot and one-third to zemindars.

15. The Association consider it only fair and equitable to allow the ryot to sue for abatement of rent in cases in which his rent is excessive. It is proposed to allow him to do so on three grounds only, corresponding to the second, third and fourth grounds of enhancement, both in Mr. Reynolds' Bill and in the Bill drafted by the Commissioners. In the opinion of the Commissioners, the first ground of enhancement finds no converse. In the opinion of the Indian Association, however, there is a converse to the first ground of enhancement. When the rate of rent paid by a ryot is above the prevailing rate payable by the same class of ryots for land of a similar description, such ryot should surely be allowed to sue for abatement. Justice requires that the grounds which are allowed to the landlord for enhancement should also be allowed to the ryot for abatement, and it would be unfair and invidious to make any exception. The Association therefore recommend that the same four grounds should be allowed both for enhancement and for abatement of rent.

16. Intimately connected with the question of enhancement of rent, is the question as to how long rents once raised should be considered as fixed. The ryots in their various meetings have expressed a very decided opinion on the matter. They would fix the rents for a period of thirty years, the lifetime of a generation. They hold, and it is impossible to call in question the justice of their contention, that as there was a Permanent Settlement between the Government and the zemindars, there was a settlement equally binding and equally obligatory between zemindars and ryots, *viz.*, that the former were not to increase the rate of rent beyond the Pergana *nirikh*. But the zemindars have systematically violated this solemn contract, and, strange to say, under the authority of the Legislature; for laws have from time to time been enacted sanctioning enhanced rates of rent, and affording facilities to the zemindar for their realization. The ryots would not indeed ask the Government to go back to the old Pergana *nirikh*, but they would most earnestly beg that at least the rate of rent should be declared fixed during 30 years, the lifetime of a generation. It is impossible not to admit that there is considerable force in this contention. The Association will at once admit that it is impossible to go back to the old Pergana rate; but it is the duty of the Government to do all that lies in its power to make amends, so to speak, for the mistakes of former Governments in allowing the

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Pergana *nirikh* to be exceeded. If the Government should find it difficult to declare the rates of rent fixed for a period of 30 years, the Association hope that, following the provisions of the Irish Land Act, the rates shall be declared unalterable and fixed for a period of fifteen years at least.

17. The Association will now proceed to consider the law relating to distraint. The Association regret to say that they cannot support the provisions of Mr. Reydolds' Bill in this respect, and which represent the views of His Honor the Lieutenant-Governor. It is worthy of note that the law of distraint has been altogether omitted from the Rent Bill, as drafted by the Rent Commissioners, as it was felt that the existence of such a law on the statute-book would be the source of endless oppression. The Rent Commissioners observe in Section 40 of the Report :—

The Bill does not reproduce the provisions of the existing law upon the subject of distraint, and we propose to abolish altogether this mode of proceeding for the recovery of rent. This off-set of English law was originally introduced into this country by Regulation XVII of 1793, which empowered certain specified landlords to distrain and sell the crops and products of the earth of every description ; the grain, cattle, and all other personal property (whether found in the house or on the premises of the defaulter, or of any other person) belonging to their tenants. This continued to be the law until 1859, when the power of distraint was limited to the produce of the land on account of which the rent is due. There can be little doubt that this change considerably impaired the coercive efficacy of this procedure as a means of recovering rent ; and we are afraid that the provisions of the present law are not always strictly attended to. There is evidence of positive abuse of these provisions in Behar ; and the experience of some of us is that they have not always been used in a regular manner in other parts of the country. We have had before us certain suggestions for shortening and improving this procedure, and have considered whether by their adoption it might not be made safely efficacious to a greater extent than it hitherto has been ; but a majority of us finally came to the conclusion that it might well be omitted from any consolidating and amending Act. It is to be observed that this conclusion is in accordance with the greater number of the votes of the Members of the Behar Rent Committee and of the Behar Indigo Planters' Association.

It is, however, now proposed by Mr. Reynolds to set aside the suggestions of the Rent Commission, and to retain on the statute-book those coercive provissions which, the Rent Commissioners complained, were in Behar, at least, attended with "positive abuse."

18. It is indeed true that these summary provisions are to be enforced, only as regards the realisation of current rents, and through the medium of the courts of law. But the whole procedure is to be *ex-parte*. It is the zemindar or his agent who is to make the application ; the ryot is not represented in court ; he is not heard ; and upon this one-sided and *ex-parte* statement, if the application is admitted, the Court shall depute an officer to distrain the crops. The property distrained is to be sold within seven days, from the date of distraint at the latest, unless in the meantime the unhappy ryot has been able to find means for depositing the amount claimed, together with cost of distraint. It is needless to add that if these provisions became law, a powerful instrument of oppression would be placed in the hands of unscrupulous zemindars. Far be it from the Association to assume that all zemindars are unscrupulous ; amongst them, indeed, there are men who are the ornaments of native Indian society ; but also amongst them, as indeed amongst all other sections of the community, there are men who are deterred from evil-doing by the terrors

of the law alone. An unscrupulous zemindar, if he wants to ruin a refractory ryot, will have no difficulty whatever in proving before a court of law which has not the opportunity of hearing the other side, a claim for money to which he is not fairly entitled. When the Rent Commission, consisting of men who were appointed to their work for their special knowledge, deliberately omitted the provisions relating to distraint, it must be assumed that they had the gravest reasons for making the change. The Association fail to see how, without these provisions, the zemindars would be put to any serious inconvenience. Chapter XVIII of the Rent Bill of the Commissioners affords them unusual facilities for the realization of arrears of rent. The Legislature, in the Chapter referred to, seems to be anxious, and justly so, that no unnecessary delay should take place in the disposal of rent suits. Section 173 of the Bill says :—

Summons to be for final disposal of case, and to direct defendant to produce documents and witnesses

173 The summons shall be for the final disposal of the suit It shall direct the defendant to produce any document, the production of which is required by the plaintiff, or upon which such defendant may desire to rely in support of his defence It shall further instruct the defendant to bring his witnesses on the day specified, if they are willing to attend without summons, or, if they are not so willing, to have summons served upon them in sufficient time to enable them to be present on such day.

Then again Section 191 says that, after the evidence has been taken, the Court shall pronounce judgment "usually at once." When such facilities have been provided for the realization of arrears of rent, the Association would submit that a sufficient case has not been made out to invest zemindars, under the provisions of the proposed law, with exceptional powers which are productive of a great deal of abuse. It is no argument to say that the zemindars enjoy such powers under the existing law. The question before the Government is—in what respects the existing law is capable of improvement? The Association are humbly of opinion that as regards the law of distraint, the present law should be modified, and the opinion of the Rent Commissioners should be given effect to.

19. Lastly, the Association would venture to draw the attention of Government to the subject of the procedure laid down in the Bill for affording facilities to zemindars to enhance rent. The Indian Association confess, they have grave misgivings as to the practical effect of the operation of the new procedure. The transferance of enhancement suits from the Civil Courts to the hands of the Collectors, who have already a variety and multiplicity of work to do, will not, the Association feel, be conducive to strict and proper justice. The very little time which Magistrate-Collectors can spare from their executive work, make them unable, as a rule, to try criminal cases arising in their districts, and will certainly render them unable to properly try enhancement suits, involving minute questions and careful enquiries for which Civil Court officers alone are by their training best fitted. The placing too of "the executive agency of Government at the disposal of the zemindar," for the purposes of enhancement of rent, is undoubtedly a great concession to the demands of the zemindar, but is scarcely fair to the ryot. Lastly, as zemindars would, under the new procedure, have to pay for the "executive agency of Government" they employ, including the pay of the Collector or Deputy Collector and Ministerial

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Officers, the concession would benefit only rich and powerful zemindars, that is, those who require no help; while it would scarcely benefit the smaller zemindars all over the country who perhaps really require some help. The Indian Association are aware that some rich zemindars, holding estates near the metropolis, have since some years past proposed and loudly demanded a measure of this sort; but this demand, the Association humbly submit, is not the demand of zemindars, as a class, all over the country, and the concession will not benefit the vast majority of them who hold only small estates with small incomes. Whether it is expedient to make to the demands of a few rich and powerful zemindars a concession which will not largely benefit landlords as a class, which will involve an entire change of the existing procedure, and which will certainly be obnoxious to cultivators in the greatest degree, is a point which the Association humbly leave to His Honor the Lieutenant-Governor for decision.

*20. The preliminary work of the Collector on the application of a zemindar for enhancement of rent will, under the new provisions, be to prepare a table of rates for the estate or tenure in question. He will have to classify lands under different heads, and determine after due enquiry the prevailing rate of rent for each class of land. This, the Association feel, will be an impossible task. Lands in the same vicinity are of such varying degrees of fertility and quality, that a table, in order to be correct, must necessarily be so elaborate and complex as to be useless for all practical purposes. The Collector, under these circumstances, must necessarily strike averages in order to fix the rate for each description of land; but the rate so fixed must be unfair to the holder of lands slightly inferior to the average land selected by the Collector. To take an example, *Sali Awal* land, *i.e.*, first class *sali* land, will, on practical inspection, be found not to be paying a uniform rate of Rs. 4 a bigah, but to be paying say between Rs. 3 and Rs. 4 a bigah according to shades of difference in the quality and situation and fertility existing among different pieces of this description of land. What is the Collector then to do? If he strikes an average and fixes the rate for *Sali Awal* land at Rs. 3-8 per bigah it would be unfair to the zemindar in half the cases, and unfair to the ryot in the other half cases. If, on the other hand, the Collector conscientiously records the prevailing rate of this land to be between Rs. 3 and Rs. 4, then his table of rate will be useless, for the whole question will have to be gone into again in settling the rent of every piece of *Sali Awal* land. The case here referred to is not a remote and possible difficulty, but one which the Association consider as likely to arise in every instance in which a table of rates will have to be drawn up. They are not aware of any single estate or zemindari in which lands of the same description pay exactly the same rate, except in cases in which zemindars have introduced such uniformity after a vast amount of litigation and much harassment of their ryots.

21. For these reasons the Association think that any attempt to make a uniform table of rates of rent for any estate or tenure will cause serious disturbance and irritation, and will practically be found impossible, unless it is done in such a manner as to involve injustice either to the zemindar or to the ryot. The Association, however, have no objection to the Collector's classifying lands, and preparing a table shewing the *average* rate of each class of land.

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22. But when the table of rates is prepared, the Collector's work is not half done yet. Unless the ryots forthwith consent to pay these rates, the zemindar will, under the new provisions, either have to go to the Civil Court for enforcing these rates against any or all of his ryots, or will have to ask the Collector to do this. Although the general rate may have been fixed by the Collector's table of rates, particular ryots may have various objections as to any particular rates applying to their lands, and all these will now have to be determined after patient and minute enquiries regarding every piece of land about which objection is raised. The Indian Association think that this certainly is a task which should be left to the Civil Court and not to the Collector. If the Government consider it possible to have general tables of rates prepared, that task may well be left to the Civil Court authorities. And when that general table is fixed, the task of hearing the objections of particular ryots, of making minute enquiries about particular pieces of land, may also be left to the Civil Court, and not to the executive. The Civil Court officers have always done this work; they are best qualified, by the training they have always received, to decide these minute points and carry on these minute enquiries, and from them alone people expect full justice in these matters. Indeed, the Association fail to see any valid reason why this work should be transferred from the Civil Court officers, who have never been found wanting in ability or hard work to the executive. On the other hand it is needless to remark that justice requires that in cases where the Government itself is a party, as in rent-suits relating to *khas mehals*, they should be tried by an independent tribunal unconnected with the Collector. The Association are unwilling to allow ryots greater privilege than zemindars, and they therefore desire that abatement suits too may be tried by Civil Courts only.

23. The Association have the same objection to the Collector's making a "Settlement jummabundi," as have been urged in the preceding paragraphs to the Collector's making an "enhanced jummabandi." It is said that the difficulties of the purchaser of a zemindari from a hostile proprietor who withholds papers and information are such that Government should interfere in his favour, and settle with his ryots for him. This seems to the Association to be an innovation in principle. Purchasers of all classes are left to their own prudence and discretion, and never expect any help from Government, however great their difficulty, for the simple reason that Government never compelled them to purchase. The Association fail to see any reason why an exception should be made in the case of purchasers of estates. As a fact, the risk of such purchasers is not such as is often represented to be; the rates previously paid by cultivators can never be long concealed from the purchaser, although the former proprietor may do his worst. Purchasers know this, and therefore a valuable zemindari never sells at a low price, although the former proprietor may be hostile and be known to be such. Surely, if the risk and difficulties of a purchaser were as great as they are sometimes represented to be, they must have affected the price at the time of the sale. It must be remembered that new comers not unoften try to cause a general rise in the rates, and then it is their interest, when there is a combination among ryots, to obtain the sympathy and the help of the authorities by representations not always accurate. From the very nature of things, the other side of the story seldom reaches the authorities.

24. For these reasons the Association think that when disputes as to rates occur the parties should be left, as hitherto, to settle their disputes in the Civil Court, and the new purchaser of an estate should not have "the executive agency of the Government" at his disposal to settle his differences with the ryots. If the former proprietor withholds papers, the Collector may be empowered to obtain them for the benefit of the new purchaser, but the obstinacy of the previous landholder should be no reason why the Collector should interfere between the purchaser and his ryots. The "executive agency of Government" has vast influence, power, and prestige in this country, and land-owners are naturally anxious to enlist and employ this prestige and influence in their service. The impartiality and perfect integrity of the executive are beyond a doubt; nevertheless, the very fact of the employment of that power at the cost and in the service of zemindars will have its natural effect with ignorant ryots, and the Association have grave fears there will often be failure of justice. It were far better if Government held aloof from these disputes, as it has hitherto done, leaving its Courts open to all, those Courts in which the poor and rich can plead their causes with equal confidence. The procedure in these Courts may be simplified in enhancement suits, as has been done in rent suits by the present draft Bill, and then no party will have reason to complain. Government has taught the people of India to look to these Courts as the seats of justice in all matters of civil disputes; and even in disputes between Government itself and private parties, these Courts are the final arbiters. To have the rates of rent settled by the executive on the instance of landlords without an appeal to these Courts would be, according to the ideas of the cultivators, a denial of justice and of right. It would be unwise to create such an impression, as it would be unwise to place the executive agency of Government at the disposal of any party to a dispute. Let the procedure of the Civil Courts be simplified, but let enhancement suits be still tried by those Courts, and justice will be done to all parties,—that justice in which, under the present arrangements, the ryot has as implicit a confidence as the zemindar. The Association would suggest the appointment of Additional Moonsiffs, if need be, which would greatly facilitate the trial of rent-suits.

25. The Association feel obliged to take exception to the provisions of Sections 6 and 16 of Mr. Reynolds' draft Bill. The law, as it stands at present, presumes that where a ryot is able to shew that he has been holding land at a fixed rent for a period of twenty years previous to the institution of the suit, he has been holding the land at such a rate since the Permanent Settlement, and his rent is accordingly not liable to enhancement. The change now proposed is, that it will be necessary for the ryot to shew, if he prefers a claim for fixity of rent, that he has been holding his land at a fixed rent not for the last twenty years, but for the last forty years and more; and it is obvious that from year to year the ryot would find it more and more difficult to substantiate a claim for fixity of rent. If the Section were to come into force from next year, it would be necessary for the ryot to shew that for 43 years previous to the institution of the suit, he had been in possession of his holding at a fixed rent; the year after, it would be necessary to shew that for 44 years the holding had been in his possession at a fixed rent. Thus after the lapse of a few years, it will no longer be possible for any ryot

or tenure-holder to substantiate such a claim. It is difficult to understand why the law in this respect should be changed. It is notorious that rent receipts in this country are given in loose sheets of paper of the worst kind; which it is very difficult to preserve and which are deposited by the ryots in very insecure places, and that it would be next to impossible, in a climate like that of this country, to preserve them for more than twenty years at the outside. But admitting that these receipts might be preserved if proper care were taken of them, it is hopeless to expect that ryots without any education, and who cannot take care of their own interests, would be found able, as a rule, to produce receipts extending over a period of nearly 40 years. The Association would therefore, under the circumstances, submit that the present law should remain uninterfered with, and that the existing presumption as regards fixity of rent should remain intact.

26. The Association would, in the next place, venture to draw His Honor's attention to the provisions of Sections 36 and 77 of the Bill as drafted by Mr. Reynolds, and of the alterations that have been made in them, very much to the prejudice of the ryots. Section 36 of the Rent Bill as drafted by the Commissioners provides that a ryot may, without the permission of the zemindar, erect upon land let for purposes of agriculture a brick-built or other dwelling-house suitable for himself and his family. Section 31 of Mr. Reynolds' Bill, which corresponds to Section 36 of the old Rent Bill, omits all reference to a brick-built house, and under the section as drafted by Mr. Reynolds, it will not be possible for a ryot to build a *pucka* house without the previous consent of the zemindar having been obtained. The mention of the brick-built house is said to be unnecessary, because "it is believed that a ryot hardly ever builds a *pucka* house without first securing a permanent lease of the land." But a zemindar may not grant him a permanent lease of the land, and it is obviously to the advantage of the ryot and of the country that he should be encouraged to cultivate habits of thrift and to erect substantial buildings. The Association would accordingly submit that the right of building *pucka* houses with or without the consent of the zemindar as proposed to be conceded to the ryot by the provisions of Section 36 of the Rent Commissioners' Bill may be embodied into law.

27. Further, the Association would also crave leave to be allowed to take exception to the modification introduced by Mr. Reynolds in Section 77 of the Bill as drafted by the Rent Commissioners. Clause (*b*) of Section 77 says that "a ryot is entitled, *any custom to the contrary notwithstanding*, to cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding was derived by public or private sale, &c. This clause has been altogether omitted from the Bill, and "the question," says Mr. Reynolds, "will be left to be governed by local custom and contract as at present." Local custom in the Mofussil, the Association regret to say, in most cases, means the power of the strongest; and the helpless ryots will often find it hard to prove the existence of a local custom against the power and influence of the zemindars. The Association are of opinion that Clause (*b*) of Section 77 of the old Bill should be embodied into law.

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28. In conclusion, the Association have to express their gratitude to the Government for its earnest effort to bring to a satisfactory settlement this important question which now for sometime has greatly stirred the public mind of this province. It would scarcely be possible to conceive of a question more intimately connected with the agricultural prosperity of Bengal and the material welfare of her people. It would indeed be a matter of sincere congratulation, if the relations between landlords and tenants could once for all be placed on a satisfactory footing. Agriculture cannot prosper, wealth cannot advance, there can be no real improvement in the condition of the people, unless the two great sections of the community—landlords and tenants—live in mutual amity, anxious to guard their own interests, but careful also about the interests of their neighbours. The Association look upon the proposed Rent Law as an honest effort on the part of the Government to settle the present unhappy relations between landlords and tenants, and it is on this account they feel deeply grateful to the Government. The Association have to express their regret for the unavoidable delay that has taken place in the submission of this letter. The delay has taken place owing partly to the endeavour made by the Association to obtain from different parts of the country the opinion of those who are known to take a deep interest in the Rent question and who have studied it carefully.

I have the honor to be,

SIR,

Your most obedient Servant,

Honorary Secretary, Indian Association

Stanhope Press.

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